Pompidou Group, Council of Europe

Legal jurisprudence of the European Court of Human Rights in relation to drug offences

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Table of Contents

1. Health

Treatment in Detention

For people suffering from drug related diseases and symptoms of drug withdrawal the State has a positive obligation to protect the health and well-being of persons deprived of their liberty under Article 2 and a negative obligation not to take a life. In additional there is also a negative obligation to not inflict torture under Article 3 and a positive obligation to meet minimum standards of treatment.

Like people with other diseases, prison authorities must meet the medical needs of people suffering from drug dependency. They are obligated to do a medical examination on admission, be aware of potential health emergencies and transfer prisoners to a medical wing or hospital if necessary, be aware of their vulnerability, look for the availability of harm reduction measures in prison, provide appropriate treatment and arrange their aftercare upon release.[1]

There are three particular elements to be considered in relation to the compatibility of a prisoner's health with their stay in detention under Article 3: (a) the medical condition of the prisoner, (b) the adequacy of the medical assistance and care provided in detention and (c) the advisability of maintaining the detention measure in view of the state of health of the applicant (see *Mouisel v. France*, no. 67263/01, paragraphs 40-42).

Having regard to the responsibility owed by prison authorities to provide the requisite medical care for detained persons (see, *Keenan v. the United Kingdom*, no. 27229/95, § 111 and *Mouisel v. France*, no. 67263/01, § 40), the Court found in *McGlinchey and Others v. UK*, where the applicant suffered from HIV and withdrawal symptoms from her heroin dependency, that there was a failure to meet the standards imposed by Article 3. The failure of prison authorities to prevent, diagnose and cure diseases constitutes a violation of Article 3 where there is a positive obligation to take appropriate steps to safeguard the lives of those within its jurisdiction (see inter alia*, L.C.B. v. UK*, paragraph 36). The Court in this case noted the failure of the prison authorities to provide accurate means to establish the applicant's weight loss, the gap in monitoring her condition by a doctor over a weekend when there was a further drop in weight, and a failure of the prison to take more effective steps to treat her condition such as hospital admission or to obtain expert assistance in controlling her vomiting, in particular a seven-day delay following the prison management's application for her urgent release during which she died of HIV-related diseases. The Court considered the treatment at the prison and lack of

[1] Lehtmets, A. and Pont, J., "Prison Health Care and Medical Ethics: A manual for health-care workers and other prison staff with responsibility for prisoners' well-being", Council of Europe (2014), p. 74.

medical supervision following her symptoms as a failure to meet the standards of Article 3. The applicant's deteriorated health was a requisite to take more effective and immediate steps to either transfer her to a hospital or to obtain more expert assistance in controlling her symptoms.

Notably the Court did not define heroin withdrawal as a cause of death. The difference in definition allowed the Court to limit its investigation to treatment of HIV-related diseases instead of treatment for drug dependency. By doing so the Court avoided the possibility of defining heroin dependency as a perquisite element to the compatibility of a prisoner suffering from drug withdrawal with their stay in detention, where diagnosed dependency should entail positive obligations *a priori*. It could be interpreted that prison authorities must be proactive and act immediately in admitting a person with drug dependence to a specialised medical wing or hospital for the appropriate treatment that corresponds with their needs under Article 3.

In *Melnik v. Ukraine*, the Court found the medical care in prison to be inadequate due to the fact that the applicant, convicted on drugs charges, was diagnosed with tuberculosis only two-and-a-half months after the applicant first complained of shortness of breath and phlegm. The applicant did not undergo the required medical check for possible tuberculosis on arrival to the prison which is a positive obligation on States under Article 3. In the Court's view, the circumstances led to the conclusion that the applicant was not provided with adequate or timely medical care, given the seriousness of the disease and its consequences for his health. There was no positive intention to humiliate or debase the applicant; however the State failed in their negative obligation under Article 3 not to cause mental and physical suffering, diminish human dignity and arouse feelings as to cause humiliation and debasement, which the detention caused.

The same negative obligation applies in cases of HIV and other blood borne diseases which is relevant because there is a higher prevalence of these diseases among people who use drugs. In *Kotsaftis v. Greece*, the applicant was placed in pre-trial detention for possessing drugs. The Court ruled that the authorities had not fulfilled their negative obligation under Article 3 to safeguard the applicant's physical integrity due to the lack of medical care for his Hepatitis-B. Contrary to the findings of an expert report submitted to the prison authorities, the applicant had been kept in detention without being given a special diet or treatment with the appropriate drugs, and had not performed a scheduled operation with a delay of one year. The applicant had also been detained with 2.4 sq. m of personal space which contravened medical advice to have the applicant moved to a larger cell.

The Court recognises the vulnerability of HIV-positive persons in prison and like other diseases place a positive obligation to provide adequate medical treatment. A lack of appropriate treatment was found in *Kats and Others v. Ukraine*, where the authorities refused to transfer the applicant, who suffered from schizophrenia and was drug dependent, to a medical facility or medical wing of the prison to treat numerous serious diseases exacerbated by her HIV infection. Only 44-days after her health condition started to deteriorate did the prison management act on issuing a release which was further delayed and during this time the applicant died. The Court found the applicant's death was indirectly caused by the inadequate medical assistance provided to her while she was in detention and there was a violation of Article 2 on account of the authorities' failure to protect the applicant's right to life which is a positive obligation. The systemic neglect of treating a person with a disease in prison gives rise to a positive obligation under Article 2 even if the person does not die because it would count as intention. Article 46 allows the Court to require that contracting States take legislative and administrative steps to remedy problems that come to light during a case. In this regard the Court should require States to increase the standards of treatment for drug dependency to match the same standard of treatment for people with other diseases.

In *Shelley v. UK*, the applicant claimed that the failure for prisons to facilitate needle exchange programmes violated Articles 2 and 3 due to the high risks of HIV and HCV within the UK prison population. In determining whether the minimum level of severity of suffering has been established to constitute a breach of Article 3, the Court has held that "the assessment of this minimum is, in the nature of things relative; it depends on all 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" (Ireland v. the United Kingdom, judgment of 18 January 1978, para. 162). The Court was not satisfied that this risk of HIV was sufficiently severe as to raise issues under Articles 2 and 3.

Instead the Court considered a potential claim to be affected by health policy due to the higher risk of infection of HIV and HCV. The Court's case-law has held omissions of the authorities in the field of health care policy which may engage their positive obligations under Article 2. This has previously included regulations around hospitals in adopting measures to protect lives (*Calvelli and Ciglio v. Italy*, no. 32967/96, paragraph 49). It is therefore possible that a positive obligation might arise to prevent the spread of a particular disease or infection; however the Court was not persuaded here that any potential threat to health that fell short of the standards of Article 2 or 3 would impose a duty on the State to take preventive steps. The Court decided that the margin of appreciation is wide for matters of general preventive measures (mutatis mutandis, *Osman v. UK*, paragraph 116).

Liability to establish facts and cause of death in detention

Article 2 carries procedural obligations on contracting States to thoroughly examine the circumstances of a death that has potentially been the responsibility of the State (see Oneryildiz v. Turkey, no. 48939/99, paragraph 91). Where there is suspicion around the death of a detainee, an "official and effective investigation" must be carried out to establish the cause of death and identify and punish the perpetrator (see Paul and Audrey Edwards v. UK, no. 46477/99, paragraph 74).

This system must be independent, impartial and satisfy minimum standards of effectiveness. The authorities must act with diligence and promptness and initiate investigations that ascertain the circumstances of the incident and identify the State officials or authorities involved. The requirement

In Kats and Others v. Ukraine, the applicant's complaints lasted four years and nine months and were still pending. The inquiry was absent of evidence indicating that the Olga Biliak's death had been caused by violence or medical negligence. Neither did the investigation address the quality of medical treatment provided to Olga Biliak. The witness statements of Olga Biliak's cellmates were obtained by the authority directly and so the investigation also did not satisfy the minimum requirement of independence or the minimum standards of effectiveness.

Discrimination against people with drug dependency in detention

While the Court found violations from the cases above, requiring a higher standard of health care for persons in prison suffering from symptoms of withdrawal and HIV-related diseases, it must be distinguished from standards of treatment for drug dependency which the Court did not deal with directly. Had the Court engaged more openly with drug dependency in *McGlinchey* as requiring a higher standard of treatment, rather than for HIV-related diseases alone, then the Court would have also investigated the discriminatory nature of treatment for dependency that is systematic in prisons. The Court should have begun with the following question: had the prisoner been suffering from HIV and was not dependent on heroin then would the prison authorities inflict the same degree of inhumane and degrading treatment? Unfortunately there was no claim put forward for Article 14 by the applicants and neither did the Court initiate an investigation under this article.

The event in *McGlinchey* occurred in 1999 during a period of major prison reform in the UK. Although the standards of treatment for HIV significantly rose after the Woolf Report was published in 1991 following an inquiry into UK prison conditions,[2] it is clear from this case that

[2] P. 25 reads, "There should be a full review of policy in relation to HIV with a view to setting aside VIR, encouraging prisoners to come forward, establishing programmes for prisoners with HIV, standardizing best

there still exists a distinction between a person with HIV and a person with HIV who is drug dependent. The Moscow Declaration published by the WHO in 2003 calls for prison health services to be integrated with public health services. This would allow independent and impartial medical assessment and advice which was lacking in *McGlinchey*.

Article 14 prohibits discrimination and states, "the enjoyment of rights and freedoms… without discrimination on any grounds such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status". Protocol 12 Article 1 states, "no one shall be discriminated against by any public authority on any ground". People suffering from drug dependency should not be discriminated against on the grounds of their disease, equal to people with other self-inflicted diseases in prison such as diabetes.

Health Care inside and outside prison

The European Prison Rules, the Committee for the prevention of Torture and domestic prison regulations themselves provide that the health care in prisons should be the same as that in the community. The UNODC published a policy brief in 2013 recommending that prison health services be at least equivalent to the public health standards of the community. According to the Court's case law, prisoners can claim to be on the same footing as the community as regards the provision of health care (see *Mathew v the Netherlands*, no. 24919/03, paragraph 186, 193). While the Court concedes that medical assistance in prison may not be at the same level as in the best medical institutions for the general public, States have to ensure that the health and well-being of detainees were adequately secured by providing them with the requisite medical assistance (see Khudobin v. Russia).

In *Shelley v. UK*, the applicant complained under Article 14 that he was discriminated against since those in prison were treated less favourably than those in the community. The difference in treatment between persons was found to not breach Article 14 as the Court found that the policy of no NEPs in prison was proportionate and supported by objective and reasonable justification, despite the Government failing to prove their arguments that the provision of clean needles would increase drug use and their failure to prove that existing measures of sterilising needles was a better health policy. This would suggest that the Court grants a wide margin of appreciation to States surrounding decisions around treatment in prison compared to outside prison, which is reinforced further by Optional Protocol 15.[3]

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practices within the system, and liaising with outside agencies. This new policy should be announced when completed, and forcefully drawn to the attention of Area Managers and governors."

[3] Optional Protocol 15, Article 1 adds to the end of the preamble to the Convention, "Affirming that the High Contracting Parties, in accordance with the principle of subsidiarity, have the primary responsibility to secure the rights and freedoms defined in this Convention and the Protocols thereto, and that in doing so they enjoy a margin

The complaint was inherently misapplied because at the time the UK did not have a practice of providing Needle Exchange Programmes outside prisons, save for one programme in Scotland. Therefore there was no consensus around this form of treatment in the UK. The applicant could have instead argued for an emerging right for affirmative action for prisoners compared to the general population because medical patients in prison are under State supervision. This would entail a positive obligation on States to provide a higher standard of treatment and to take steps to prevent the spread of HIV inside prison in general and in particular for vulnerable persons such as people who inject drugs.

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) sets out minimum standards for persons in prison. It recommends the promotion of socio-therapeutic programmes for drug addicts in prison. The recommendation should be extended to apply a holistic approach to treating drug dependency including OST.

Harm Reduction as a right

The question emerges if the State can be expected under the ECHR to have a positive obligation to provide safe drug use and facilities for people who use drugs in order to prevent blood borne diseases. The answer to this may be in the definition of "treatment" itself. Firstly it must be determined whether or not States have an obligation to treat drug dependency. In order to establish what minimum standards of treatment exist, reference must be given to customary international law which is the existing State practice. While 46 member States have some sort of harm reduction and treatment available, it remains a grey area over what regulations should apply. A CoE resolution on drug treatment, as a soft-law text, would be helpful in order to set clear guidelines for member States. For most member States, this matter is for the European Union to deal with, which may in future have an influence over the attitudes of other countries. Harm reduction remains a matter of health policy and so States have a wide margin of appreciation which may change with the adoption of soft-law, EU resolutions and arguments to the Court on customary international law.

Safe drug use as harm reduction would first and foremost come in the form of a policy that informs its population on the effects of drugs in a scientific way through educational campaigns and in schools, as is done with legal drugs and issues around sexual awareness. The aim is to impart non-judgemental and purely evidence-based information around drugs. This includes a positive obligation under Articles 2 and 8. Evidence for lower rates of drug consumption can be found in countries that provide drug education opposed to those that provide the "Just Say No"

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of appreciation, subject to the supervisory jurisdiction of the European Court of Human Rights established by this Convention".

approach. In the USA the prevalence of cannabis use is 41.5% for people aged 12 and above[4] and in the Netherlands the rate is 25.7% for ages 15-64.[5] Education can play a role in this respect. At minimum it can be argued that there is an obligation on member States to provide education on drugs in this manner and this would be a form of harm reduction.

The strongest harm reduction practice of treatment among CoE member States is opioid substitution treatment (OST) which is available in 46 member States, with the exception of Russia. When applied with psychosocial therapy it is considered to be the most effective treatment of opioid dependence by the World Health Organisation.[6] In the pending case of *Kurmanayevskiy v. Russia*, the denial of OST for people who use drugs has been argued to be an intentional infliction of severe pain and suffering and not a "reasonable measure" with a State's positive obligation to prevent torture, inhuman or degrading treatment under Article 3. Withholding effective treatment and prolonging to further suffering is argued in *Kurmanayevskiy* to constitute state-sanctioned torture or other cruel or degrading treatment. It be taken into account whether or not "all reasonable measures" have been undertaken in order to prevent degrading treatment of vulnerable groups (*Opuz v. Turkey*, No. 33401/02, Judgment of 9th June 2009, para 162). Although the Court does not require that unauthorised drugs be regulated in a certain way (*Hristozov and Others v. Bulgaria*, 47039/11, paragraph 108), if it is found that a reasonable measure to prevent degrading treatment would include the availability of OST then it could become a State obligation to supply it to vulnerable groups. The Court ruled in *Hristozov* that Article 3 does not place an obligation on States to alleviate the disparities between the levels of health care available in various countries. However OST is adopted in every other member State and not only in "various countries" (paragraph 113).

According to the General Comment No. 14 of the Committee on Economic, Social and Cultural Rights, "there is a strong presumption that retrogressive measures taken in relation to the right to health are not permissible … the State party has the burden of proving that [retrogressive measures] have been introduced after the most careful consideration of all alternatives and that they are duly justified by reference to the totality of the rights provided for in the Covenant in the context of the full use of the State party's maximum available resources" (para.

[4] Substance Abuse and Mental Health Services Administration. (2010). Results from the 2009 National Survey on Drug Use and Health: Volume II. Technical Appendices and Selected Prevalence Tables (Office of Applied Studies, NSDUH Series H-38B, HHS Publication No. SMA 10-4586Appendices). Rockville, MD, p. 99, Table G.2, and p. 101

[5] "The Netherlands Drug Situation 2011: Report to the EMCDDA by the Reitox National Focal Point" (Netherlands Institute of Mental Health and Addiction and the Ministry of Security and Justice Research and Documentation Centre, 2012), p. 40

[6] World Health Organisation, *Guidelines for the Psychosocially Assisted Pharmacological Treatment of Opioid Dependence* (2009), pp. X, XI.

32).[7] The burden is therefore on Russia in the case above to prove that they have considered OST and to give their reasons why they have not adopted it. If the Court finds that they have not taken "all reasonable measures" in preventing degrading treatment then there will be a violation of Article 3.

Most commonly the regulations surrounding Needle Exchange Programmes and other harm reduction facilities among member States are coupled with abstinence-based treatment and social therapy which when taken alone are long-standing traditional and universal forms of treatment. It would appear through customary international law that there is emerging a right to provide harm reduction with this programme of total abstinence. The lines are blurred with harm reduction services without the goal to abstain from using drugs because this may not be defined as treatment by some countries where the goal is to bring the person back to a drug-free life. For example Switzerland would be among the only countries where it is possible for anyone to enjoy the use of drug consumption rooms and NEPs without signing up to a treatment programme. This definition of harm reduction will differ to another country and so without a clear consensus it is not for the Court to require the provision of harm reduction services. Here emerges the question whether or not States are required to provide safe drug use and whether or not safe drug use can be defined as treatment under Article 3. It appears for now that education around safe drug use and abstinence-based treatment would require an obligation. However providing facilities to consume drugs safely, whether or not with the aim to become drug free, has not yet become an obligation.

[7] Kurmanayevskiy et al. v. the Russian Federation, No. 62964/10, 58502/11, 55683/13, Submission of Canadian HIV/AIDS Legal Network, Harm Reduction International, Eurasian Harm Reduction Network, paragraph 4.26

Detainment pending trial

Continued detention can be justified only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty. Reasonable suspicion that a person has committed an offence is a condition *sine qua non* (but-for) for the validity of continued detention, but after a certain time it no longer suffices. Regarding the danger posed to the public, even if there does appear to exist persuasive consideration in the case as to a risk, it may disappear after a certain time (*Tomasi v. France*, judgment 27 August 1992, Series A no. 241-A, p. 36 paragraph 91). The Court must then establish whether the other grounds cited by the judicial authorities continue to justify the deprivation of liberty (see *Wemhoff v. Germany,* judgment of 27 June 1968, Series A no. 7, pp. 24-25, para 12.; *Ringeisen v Austria,* judgment of 16 July 1971, Series A no. 13, p. 42, para. 104).

As established in the Court's case law, the "reasonableness" of pre-trial detention must be assessed in each case according to its special features which would lead to difficulties for the authorities to determine the facts and mount a case (see *Wemhoff v. Germany*, p. 24, para. 10).

Where such grounds are **"relevant"** and **"sufficient"**, the Court must also ascertain whether the competent national authorities displayed **"special diligence"** in the conduct of the proceedings (see *Matznetter v. Austria*, judgment of 10 November 1969, Series A no. 10, p. 34, para. 12; *B. v. Austria*, judgment of 28 March 1990, Series A no. 175, p. 16, para. 42; *Letellier* judgment, p. 18, para 35; *W. v. Switzerland*, judgment 26 January 1993, Series A no. 254-A, p. 15, para. 30).

In *Mansur v. Turkey*, the Government argued that the heavy sentence granted against the applicant would increase the risk of absconding and so detention is justified in this sense. While the length of sentence may be relevant to the risk of absconding, the Court points out that the **danger of absconding cannot be gauged solely on the basis of the severity of the sentence** (see Dublas v. Poland, 48247/06). It must be assessed with reference to a number of other relevant factors which may either confirm the existence of a danger of absconding or make it appear so slight that it cannot justify detention pending trial (see *Letellier* judgment, p. 19, para. 43).

In *Van der Tang v. Spain,* the Court agreed with the Government that the alleged drug offences were of a serious nature. However, **the suspicion of the involvement of the person concerned in serious offences, did not alone justify a long period of pre-trial detention** (see *Tomasi v. France*, judgment 27 August 1992, Series A no. 241-A, p. 35, para. 89).

The authorities are obliged to consider alternative means of guaranteeing a person's appearance at trial, rather than continued detainment (see *Neumeister v. Austria*, judgment 27 June 1968, Series A no. 8, p. 3 paragraph 3; and *Jablonski v. Poland*, judgment, no. 33492/06 paragraph 83, *Sulaoja v. Estonia*, no. 55939/00 paragraph 64).

If these conditions are not met then the grounds for detention cannot be regarded as "relevant and sufficient".

Prohibition of Removal

Article 3 implies the obligation on States not to deport a person where there are substantial grounds for believing that the person would face a real risk of being subjected to treatment contrary to Article 3 (see *Soering v. UK*, judgment 7 July 1989, Series A no. 61, p. 35, paras. 90-91). Article 3 prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the victim's conduct (see *Ireland v. UK,* judgment 18 January 1978, Series A no. 25, p. 65, para. 163) and therefore deportation for all crimes including any drug-related offences must not interfere with Article 3 obligations.

In *H.L.R. v. France*, the Court does not rule out the possibility that Article 3 may also apply where the danger emanates from persons or groups of persons who are not public officials which in this case were drug cartels whom the applicant was dealing with when a large quantity of cocaine was confiscated from his possession in Roissy airport. This is later clarified in *Salah Sheekh v. the Netherlands*, where the Court noted "the existence of the obligation not to expel is not dependent on whether the risk of the treatment stems from factors which involve the responsibility, direct or indirect, of the authorities of the receiving country" (see also *T.I v. UK*).

However it must be shown that the risk is real and that the authorities of the receiving State are not able or willing to obviate the risk by providing appropriate protection. In *H.L.R v. France*, the applicant's family wrote to the applicant warning him that he would be subject to vengeance by the cartel that were waiting for his return to Columbia following his failure to smuggle their drugs. The Court ruled that the documentation from the applicant's family did not support the claim that his personal situation would be worse than that of other Columbians. The applicant did not show that the authorities are incapable of affording him appropriate protection and it was found that there was no violation of Article 3 in his deportation. Given the fact that the death toll in Mexico in relation to the "war on drugs" has amounted to around 120,000 people between 2006 and 2015, it has become clear that the police are incapable of providing protection for targets of drug cartels. Without a case being brought to the Court in relation to Mexico's drug war since *H.L.R.* which granted its judgment in 1997, it is unclear whether the Court would so easily dismiss such threats. If an applicant can support the risk of death or torture with the support of an NGO or civil society then removal would not be possible for the contracting State.

Prohibition of removal does not only apply in contexts where the risk to the individual of being subjected to any of the proscribed forms of treatment under Article 3 emanates from intentionally inflicted acts of the public authorities in the receiving country or from those of non-State bodies in that country. Limiting the application of Article 3 would undermine the

absolute character of its protection and the Court reserves flexibility to address such complaints.

In *D. v. UK*, the applicant was facing removal following charges of drug smuggling on transit through London. The Court ruled that the applicant's removal to St. Kitts upon the completion of his prison sentence in the UK would interfere with Article 3 obligations, where it was believed that the risk of withdrawal of medical facilities provided for the applicant for AIDs would amount to inhuman treatment by the respondent State. Regardless of whether or not the applicant entered the UK in the technical sense by stop-over to St. Kitts through London, the Court noted that he has been physically present there and thus within the jurisdiction of the respondent State within the meaning of Article 1.

Where it is believed that a person suffering from drug dependency is being removed to a country without necessary medical facilities to cure or assess their medical needs, then removal would be prohibited under Article 3. Should the Court adopt a stronger position on harm reduction facilities as a prevention measure, such as the argument for NEPs in *Shelley*, then it could emerge that removal to a country without adequate harm reduction facilities for drug users or the general prison population would be prohibited. However it would first have to be established that a lack of such services would interfere Article 3 which was not concluded in *Shelley* and currently member States have a wide margin of appreciation for prevention policy.

Freedom of the press v. right to privacy

Freedom of expression is a pillar in a democracy and the press act as the "public watchdog" and have the freedom to publish on issues that concern the public. Freedom of expression carries with it "duties and responsibilities" which also apply to the media even with respect to matters of serious public concern. These duties are significant when there is a question of attacking the reputation of a named individual and infringing the "rights of others". Thus special grounds are required before the media can be dispensed from their ordinary obligation to verify factual statements that are defamatory of private individuals. It could be argued that people found in possession of drugs, in particular vulnerable people suffering from drug dependency, have a right to privacy from the media publishing stories. The right to privacy can carry heavier weight in cases concerning the press which is circumstantial and varies depending on a number of factors.

The right to protection of reputation is protected by Article 8 (see Chauvy and Others paragraph 70; Polanco Torres and Movilla Polanco v. Spain, no. 34147/06, paragraph 40). The concept of "private life" is a broad term without an exhaustive definition, which covers the physical and psychological integrity of a person and can therefore embrace multiple aspects of a person's identity, such as gender identification and sexual orientation, name or elements relating to a person's right to their image (see S. and Marper v. UK, no. 30562/04 paragraph 6). It covers personal information which individuals can legitimately expect should not be published without their consent (See Flinkkila and Others, paragraph 75; Saaristo and Others v. Finland, no. 184/06, paragraph 61). It could be argued that a person's choice of drug in their private lives could be compared to a person's choice of sexual orientation so long as they are not interfering with the rights of another person.

An attack on a person's reputation must attain a certain level of seriousness and in a manner causing prejudice to personal enjoyment of the right to respect for private life (see A. v. Norway paragraph 64). Article 8 cannot be relied on in order to complain of a loss of reputation which is the foreseeable consequence of one's own actions such as the commission of a criminal offence (See Sidabras and Dziautas v. Lithuania, no. 55480/00 and 59330/00, paragraph 49). Because possessing drugs is a crime in some Council of Europe member States, it could be justified as being of legitimate interest to the public. Where it is determined that a person is dependent on drugs it could be disputed whether they deserve a loss of reputation.

The Court is required to verify whether the domestic authorities struck a fair balance when protecting Article 8 and Article 10, which is summarised as:

- The contribution to a debate of general interest;

- How well known is the person concerned and what is the subject of the report;
- His or her prior conduct;
- The method of obtaining the information and its veracity;
- The content, form and consequences of the publication;
- The severity of the sanction imposed.

The definition of a subject of general interest includes political issues, crimes, sporting issues and performing artists (White v. Sweden, no. 42435/02, paragraph 29; Egeland and Hanseid, paragraph 58; Leempoel & S.A. ED. Ciné Revue, paragraph 72; Nikowitz and Verlagsgruppe News GmbH v. Austria, no. 5266/03, paragraph 25; Colaco Mestre and SIC, S.A. v. Portugal no. 11182/03 and 11319/03, paragraph 28; Sapan v. Turkey, no. 44102/04, paragraph 34). It does not include rumoured marital difficulties of a president of the Republic or the financial difficulties of a famous singer (see Standard Verlags GmbH, paragraph 52; Hachette Filipacchi Associes (ICI Paris), paragraph 43).

A distinction is made between private individuals and persons acting in a public context, as political figures or public figures. A distinction is made between a politician and an individual (see Von Hannover, paragraph 63). Therefore Article 8 will be applied differently based on the circumstances of that person. In *Axel Springer AG v. Germany,* concerning an actor caught in possession of cocaine, the Court found that details of the arrest were of interest to the public because his admirers could have been encouraged to intimidate him by taking drugs. The main reason for the Court was because the person is considered a well-known public figure. Meanwhile in *Blaja News SP. ZO.O v. Poland*, the Court found the interference to be "necessary in a democratic society" because the journalist could not supply evidence for their claims. The reasons given were therefore not explicitly linked to private matters.

Where published photos and accompanying commentaries relate exclusively to details of the person's private life and have the sole aim of satisfying the curiosity of a particular readership in that respect, the public do not have a right to be informed. For this there is a narrower interpretation of Article 10. The way in which the photo or report are published and the manner in which the person is represented must be taken into consideration (see Wirtschafts-Trend Zeitschriften-Verlagsgesellschaft m.b.H v. Austria, nos. 66298/01 and 15653/02, paragraph 47).

It could be argued in cases concerning people with drug dependency that publishing articles would stigmatise the person and therefore without any legitimate public interest it would interfere with the right to a private life. The severity of the crime and the status of the person are the major considerations for allowing freedom of expression in these cases. If it can be

accepted by the Court that drug consumption is a matter of private life, at least in jurisdictions where there is no criminal offence for possessing personal amounts of drugs, then the rights of private life outweigh freedom of expression. Interestingly all European countries do not have laws prohibiting drug consumption but instead drug possession. Therefore even if it can be established that a person has consumed drugs in the past, without possession it would not be a crime and so there may not be any right to publish this information.

Appendix 1

Article 2

Jasinska v. Poland, 28326/05

The applicant was imprisoned for theft and underwent treatment for psychological problems and had depression. He swallowed 60 psychotropic tablets administered by the prison nurse which he hid under his tongue and committed suicide.

No thought had been given to a possible placement in a specialised institution or in solitary confinement. The Court questioned whether a prison regime had been appropriate. The duty to provide inmates with adequate medical care should not be confined to prescribing appropriate medicines without also ensuring that they were properly monitored.
Violation of Article 2.

Appendix 2

Article 3

Ribitsch v. Austria, 18896/91
The applicant was charged with supplying heroin that led to the overdose of an Austrian national. While in detention the applicant complained of inhuman or degrading treatment.
The Court emphasises that, in respect of a person deprived of his liberty, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3. It reiterates **that the requirements of an investigation and the undeniable difficulties inherent in the fight against crime cannot justify placing limits on the protection to be afforded in respect of the physical integrity of individuals** (see Tomasi v. France judgment 27 August 1992, Series A no. 241-A, p. 42, para. 115).
Violation of Article 3.

H.L.R. v. France, 24573/94
The applicant faces a deportation order following the smuggling of cocaine into Roissy airport. The applicant complains that he would be subject to vengeance by drug cartels who recruited him as a drug smuggler if he returns to Columbia.
Article 3 implies the obligation on States not to deport a person where there are substantial grounds for believing that the person would face a real risk of being subjected to treatment contrary to Article 3 (see Soering v. UK judgment 7 July 1989, Series A no. 61, p. 35, paras. 90-91).

Article 3 prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the victim's conduct (see Ireland v. UK judgment 18 January 1978, Series A no. 25, p. 65, para. 163).

The Court does not rule out the possibility that Article 3 may also apply where the danger emanates from persons or groups of persons who are not public officials. However it must be shown that the risk is real and that the authorities of the receiving State are not able to obviate the risk by providing appropriate protection.

There are no documents to support the claim that the applicant's personal situation would be worse than that of other Colombians. The applicant has not shown that the authorities are incapable of affording him appropriate protection.
No violation.

D. v. UK, 30240/96
The applicant was imprisoned in the UK for drug importation. In prison it was discovered that he had HIV and was close to death. Following the completion of his prison sentence, the UK ordered deportation against the applicant, who argues that his island of St. Kitts does not have appropriate treatment for his disease and he will be homeless where the conditions there would result in the aggregation of his death and ill treatment.

The Court observes that Article 3 applies to the applicant's deportation from the UK to St. Kitts. Regardless of whether or not he entered the UK in the technical sense by stop-over to St. Kitts through London, the Court noted that he has been physically present there and thus within the jurisdiction of the respondent State within the meaning of Article 1.

So far in the Court's Case-Law this principle has only been applied in contexts in which the risk to the individual of being subjected to any of the proscribed forms of treatment emanates 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 are unable to afford him appropriate protection (see Ahmed judgment, Ioc. Cit., p. 2207, para. 44).

To limit the application of Article 3 would be to undermine the absolute character of its protection. The Court reserves flexibility to address applications of Article 3.

The Court will determine whether there is a real risk that the applicant's removal would be contrary to Article 3. In so doing the Court will assess the risk in light of the material before it, including the most recent information on his state of health.

The Court notes that the applicant is in the advanced stages of HIV and has been transferred to a hospital. The abrupt withdrawal of these facilities will entail the most dramatic consequences for him. In view of these exceptional circumstances, the implementation of the decision to remove him to St Kitts would amount to inhuman treatment by the respondent State in violation of Article 3.

Rehbock v. Slovenia, 29462/95
In the course of an arrest following a drug trade, the police injured the applicant.
The Court notes that the applicant was not arrested in the course of a random operation which might have given rise to unexpected developments to which the police might have been called upon to react without prior preparation. They have sufficient time to evaluate the possible risks and take all necessary measures for carrying out the arrest. There were 13 policemen against one. The applicant did not carry a weapon or threaten to attack the police during the arrest.

The burden therefore rests on the government to demonstrate that the use of force was not excessive.

The Government report contained inconsistencies stating initially that the applicant hit his face on the mudguard of a parked car and the pavement and to the Commission they claimed he hit his head on the bumper of a car. The Government could not explain the inconsistency. Accordingly the force used was excessive and unjustified in the circumstances and there has been a violation of Article 3.

Regarding the alleged ill-treatment during detention, the applicant had received regular examinations by doctors and he refused to undergo recommended surgery. Despite the prison staff's failure to provide him with painkillers on several occasions, this did not attain a degree of severity amounting to a violation of Article 3.

Egmez v. Cyprus, 30873/96
The applicant was beaten during the arrest of a drug deal at the buffer zone of Cyprus and complained that he was later tortured by the police investigators.
The Court recalls that Article 3 enshrines one of the most fundamental values of democratic societies. Even in the most difficult circumstances, such as the fight against organised crime, the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment (see Selmouni v. France, no 25803/94 article 95). Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 (Ireland v. UK judgment 18 January 1978, Series A no. 25, p 65 article 162). In order to determine whether a particular form of ill treatment should be qualified as torture, the Court must have regard to the distinction, embodied in the provision, between this notion and that of inhuman or degrading treatment. As the Court has previously found, it appears that it was the intention that the Convention should by means of this distinction attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering (Selmouni article 96).
The Court considers that it was not shown that the officers' aim was to extract a confession. The Court cannot disregard the uncertainty concerning the gravity of the applicant's injuries. The Court considers that the ill-treatment did not qualify as torture. Even so, the treatment was serious enough to be considered inhuman and there was a breach of Article 3.

Peers v. Greece, 28524/95
Applicant, a UK citizen who was a registered heroin addict there, was given an eight-year sentence in Greece for being a heroin addict.
He complains that the conditions of his detention amounted to inhuman and degrading treatment, focusing on the conditions of the segregation unit of the Delta wing of the prison.

He complained there was no ventilation or window in his cell, no sheets, pillows, toilet paper and toiletries.

The Court recalls that, according to its case-law, ill-treatment must attain a minimum level of severity if it is to fall within Article 3. The assessment of this minimum level of severity is relative; it depends 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 (see Ireland v. UK, judgment 18 January 1978, Series A no. 25, p. 65 article 162).

In considering whether a treatment is degrading within the meaning of Article 3, the Court will have regard to whether its object is to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it adversely affected his or her personality in a manner incompatible with Article 3 (see Raninen v. Finland judgment 16 December 1997, Reports of Judgments and Decisions, 1997-VIII, pp. 2821-22 article 55).

The Court finds there is no evidence that there was a positive intention of humiliating or debasing the applicant however this does not conclude the ruling of the violation (see V. v. UK, 24888/94 article 71, ECHR 1999-IX).

The authorities took no steps to improve the objectively unacceptable conditions of the applicant's detention. This denotes lack of respect of the applicant. The prison conditions diminished the applicant's human dignity and aroused in him feelings of anguish and inferiority capable of humiliating and debasing him and possibly breaking his physical or moral resistance. Violation of Article 3.

Lorse and Others v. The Netherlands, 52950/99
The applicant was convicted with drug and weapon offences and placed in a maximum security prison with fears that he would attempt to escape and pose a risk to society, as he had previously evaded arrest in the past and harmed a person.

The applicant complained that the prison regime violated Article 3. This may be compared to applications lodged against Italy where the special prison regime conditions violated Article 3 (Messina v Italy; Indelicato v. Italy, 31143/96; Ganci v. Italy 41576/98).

The applicant's visits were strictly limited. However unlike the Italian cases above, the Court cannot find that the applicant was subjected either to sensory isolation or to total social isolation. Neither is it for the Court to examine the validity of the assessment carried out by the domestic authorities in placing the applicant in a strict regime.

The applicant was subject to strip searches following every visit with the medical staff and personal visits, in addition to weekly routine strip searches in his dorm even if he had no contact with the outside world. The Court considers that in the absence of convincing security needs, the practice of weekly strip searches for a period of more than six years diminished the applicant's human dignity and must have given rise to feeligns of anguish and inferiority capable of humiliating and debasing him. Accordingly, the Court concludes that the combination of routine strip searching with the other stringent security measures amounted to inhuman or degrading treatment in violation of Article 3.

The other applicants complained that restrictions on contacts with the applicant amounted to inhuman or degrading treatment, which the Court found no violation.

McGlinchey and Others v. UK, 50390/99
The applicant was convicted for theft and sentenced to four months' imprisonment on 7 December 1998. She had a long history of intravenous heroin dependency and was asthmatic. She stated to her solicitor that she intended to use this period to rid herself of her dependency to heroin. On arrival to the hospital she weighed 50 kg.

Prison records showed that she was complaining of withdrawal symptoms and vomited frequently. She was prescribed medication to help with the withdrawal symptoms which were not given on one day, which the applicants allege was a punishment and the Government defend was on the doctor's advice. She had to clean her own vomit and when seen by her mother had vomit in her hair and told her she felt she was going to die in prison. On 12 December her weight was recorded at 40kg. On 14 December she suffered from a cardiac arrest and died on 3rd January 1999.

During the inquest it emerged that the scales used to weigh Judith McGlinchey in prison were inaccurate and incompatible. She was prescribed 20 doses of antibiotics for her septic arm which she only received 16. The head of nursing care was unable to explain why. The jury unanimously returned a vote of open verdict rather than death by natural causes.

The parties submitted that the prison authorities failed to administer her medication for her asthma and heroin withdrawal and on one occasion deliberately omitted giving her an injection as punishment for her behaviour. The prison authorities permitted her to dehydrate and vomit unnecessarily and delayed transferring her to a civilian hospital where she could be expertly treated.

The Court finds that it is not substantiated that relief for her withdrawal symptoms was denied as a punishment, as records show that doctors had monitored the applicant at the one morning she was not administered the injection.
The Court finds that there is insufficient material to reach any findings on the applicant cleaning her own vomit.

Of the four antibiotic doses omitted, the Court does not find any evidence to show this failure had any adverse effect on the applicant's condition or caused her any discomfort.

Finally the Court considered the complaints that not enough was done to treat the applicant's heroin withdrawal symptoms or preventing her suffering or worsening of her condition. On the weekend of the 12 December, there was no doctor visit for two days. There was an observed drop of weight to 40kg which is 10 less since her admission five days earlier. The nursing staff did not alert a doctor. It had not been established whether she was dehydrated prior to her admission to hospital but the doctor of the hospital noted there were strong indications to this effect due to an inability to insert a central line.

Having regard to the responsibility owed by prison authorities to provide the requisite medical care for detained persons the Court finds that there was a failure to meet the standards imposed by Article 3. It notes the failure to provide accurate means to establish the applicant's weight loss, the gap in monitoring her condition by a doctor over the weekend when there was a further drop in weight and a failure of the prison to take more effective steps to treat her condition such as hospital admission or to obtain expert assistance in controlling the vomiting.

The Court concludes that the prison authorities' treatment of Judith contravened the prohibition against inhuman or degrading treatment contained in Article 3.

Rohde v. Denmark, 69332/01
The applicant was imprisoned for drug importation and placed in solitary confinement which he complained violated Article 3.

The Court reiterated that solitary confinement was not in itself in breach of Article 3. The solitary confinement lasted eleven months and 14 days. In its assessment the Court took into account that the applicant had eight square metres in which there was a television, access to newspapers. Although excluded from other inmates, he had regular contact with prison staff, received weekly language lessons and visited the prison chaplain. He was regularly visited by doctors, and received visits from his family and friends under supervision. This did not amount to treatment contrary to Article 3.

Romanov v. Russia, 63993/00
The applicant was arrested for public intoxication and detained in a psychiatric ward of a detention facility and charged for the consumption and possession of drugs.

The applicant complained about his conditions of detention.

To fall under Article 3, ill-treatment must attain a minimum level of severity. The assessment of this level of severity is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and the sex, age and state of health of the victim (Valasinas v. Lithuania no. 44558/98, paragraph 100-101).

The suffering and humiliation involved must in any event go beyond the inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. The State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (Valasinas paragraph 102; Kudla v. Poland, no. 30210-95 paragraph 94). When assessing conditions of detention, account has to be taken of their cumulative effects as well as the applicants specific allegations (Dougoz v. Greeze, no. 40907/98 paragraph 46).

In the present case the applicant was held in a psychiatric ward of a detention facility for a year, three months and 13 days.

It is established that the applicant was held in a cell with 1-1.6 sq m of space per inmate with up to 35 inmates in the cell. In Kalashnikov, the applicant was confined to 0.9-1.9 sq m which the Court held was severe overcrowding (Kalashnikov v. Russia, no. 47095/99 paragraph 96-97). In other cases with no violation, the restricted space in the sleeping facilities was compensated by the freedom of movement enjoyed by the detainees during the day-time (Valasinas paragraph 103 and 107; Nurmagomedov v. Russia, no. 30138/02).

The Court considers the extreme lack of space to be the focal point for its analysis of compatibility of the conditions of the applicant's detention with Article 3.

The Court considers that the conditions of detention, which the applicant hadto endure for at least 11 months, must have undermined the applicant's human dignity and aroused in him

feelings of humiliation and debasement. Whilst the Court notes with satisfaction that at present the number of persons detained in the detention facility is half that in 1998, this does not detract from the wholly unacceptable conditions which the applicant had clearly had to ensure. Violation of Article 3.

Khudoyorov v. Russia, 6847/02
The applicant was arrested for the suspicion of drug possession.
The applicant complained that the conditions of his detention and transport to and from the courthouse were in breach of Article 3.

The Court finds a violation of Article 3 on the basis of the facts that have been presented and are undisputed by the Government. The main characteristic is the measurements of the cells. The number of inmates was greater than that of the available bunks. Inmates had less than 2 sq. m of personal space. Save for one hour of daily exercise, for the remainder of the day the applicant was locked in the cell which contained washbasin, lavatory and eating utensils. The applicant was held in these conditions for more than four years and three months.

In *Peers v. Greece*, the applicant was given a much bigger cell and this was considered a relevant factor in finding a violation of Article 3, albeit that the problem of space was coupled with an established lack of ventilation and lighting. In Kalashnikov the applicant was confined to a space of less than 2 sq. m which constituted overcrowding.

The fact that the applicant was obliged to live, sleep and use the toilet in the same sell was sufficient to cause distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, and to arouse within him feelings of anguish and inferiority capable of humiliating and debasing him. These feelings were further exacerbated by the inordinate length of his detention.

The Court notes with concern that the lavatory had no flush system, the cell windows were covered with metal shutters blocking access to fresh air and natural light and the applicant was only permitted to talk to his close relatives in a language they did not master, without any basis on security concerns. Violation of Article 3.

Conditions of transport between the facility and the courthouse
Regarding evidence, the Court has generally applied the standard of proof “beyond reasonable doubt” however such proof may allow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see Salman v. Turkey, no. 21986/93 paragraph 100).

The Court reiterates that proceedings do not in all cases lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must approve that allegation) because in certain instances the respondent Government alone have access to information capable of corroborating or refuting these allegation. A failure on a Government's part to submit such information without a satisfactory explanation may give rise to the drawing of inferences as to the well-doundedness of the applicant's allegation (see Ahmet Ozkan and Others v. Turkey, no. 21689/93 paragraph 426).

The applicant could not take exact measurements of the prison van compartment, which he claims was less than 1 sq. m, but the Government could have readily submitted details in their support but did not. This is the first case whereby the Court examined the compability of transport conditions with Article 3 and so it seeks guidance from the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment.
The CPT considers 0.8 sq. m to be unsuitable for transporting a person no matter how short the duration. Therefore no breach. However the applicant shared the compartment with another detainee, taking turns to sit on the other's lap. The Court finds that such transport arrangements are impermissible, irrespective of the duration. Violation of Article 3.

Melnik v. Ukraine, 72286/01
The applicant was arrested on drug charges.

The applicant complained a breach of Article 3 due to not receiving the necessary medical treatment for tuberculosis while serving his sentence. He also complained of the conditions of his detention. He further alleged that he was not provided with the required prescription drugs, medicines and the necessary medical care for his tuberculosis.

There are three particular elements to be considered in relation to the compatibility of the applicant's health with his stay in detention: (a) the medical condition of the prisoner, (b) the adequacy of the medical assistance and care provided in detention and (c) the advisability of maintaining the detention measure in view of the state of health of the applicant (see Mouisel v. France, no. 67263/01, paragraphs 40-42).

Overall there are three elements in the applicant's complains.
-Firstly the applicant's complaints regarding overcrowding in his prison cells;
-Secondly the applicant's complains regarding the domestic authorities' failure to prevent, diagnose and cure his tuberculosis in due time;

-Thirdly, the applicant's complaints regarding the lack of proper nutrition, ventilation, daily walks or conditions of hygiene and sanitation.

Overcrowding in prison cells
Applicant had 1-1.5 sq. m of personal space which the Court finds to be severely overcrowded.

The alleged failure by the domestic authorities to prevent, diagnose and cure the applicant's tuberculosis
The Court finds the medical care to be inadequate due to the fact that the applicant was diagnosed with tuberculosis two and a half months after the applicant first complained of shortness of breath and phlegm.

The applicant did not undergo the required medical check for possible tuberculosis on arrival to Penitentiary No. 316/83.

In the Courts view, the circumstances lead to the conclusion that the applicant was not provided with adequate or timely medical care, given the seriousness of the disease and its consequences for his health.

Lack of proper nutrition, ventilation, daily walks and adequate conditions of sanitation and hygiene
The applicant's conditions of hygiene and sanitation were unsatisfactory and contributed to the deterioration of his poor health, due to weekly access to a shower and ability to wash his clothes.

The Court concluded that there was no indication that there was a positive intention of humiliating or debasing the applicant, however the absence of any such purpose cannot exclude a finding of a violation of Article 3 (see Peers v. Greece, no. 28524/95 paragraph 74). His detention must have caused him considerable mental and physical suffering, diminishing his human dignity and arousing in him such feelings as to cause humiliation and debasement. Violation of Article 3.

Jalloh v. Germany, 54810/00
The applicant was arrested following a drug deal, after which he swallowed a bag containing .2g of cocaine which the police forced him to regurgitate through forcibly administering emetics. The applicant complained that he had been subjected to inhuman and degrading treatment.

Treatment has been held by the Court to be “inhuman” because it was premeditated, applied for hours and caused actual bodily injury or intense physical and mental suffering (see Labita, paragraph 120). Treatment has been considered “degrading” when 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 (see Hurado v. Switzerland, paragraph 67), or when it was such as to drive the victim to act against his will or conscience (see Denmark, Norway, Sweden and the Netherlands v. Greece, 3321/67, 3322/67, 3323/67. 3344/67, p. 186; Keenan v. UK, noi. 2729/95 paragraph 10). Futhermore, in considering whether treatment is “degrading”, one of the factors which the Court will take into account is the question whether its object was to humiliate and debase the person concerned, although the absence of any such purpose cannot conclusively rule out a finding of a violation of Article 3 (see Raninen v. Finland, paragraph 55).

With respect to medical interventions to which a detained person is subjected against his or her will, Article 3 imposes an obligation on the State to protect the physical well-being of persons deprived of their liberty, for example by providing them with the requisite medical assistance.

Even where it is not motivated by reasons of medical necessity, Articles 3 and 8 do not prohibit recourse to a medical procedure in defiance of the will of a suspecti n order to obtain from him evidence of his involvement in the commission of a criminal offence. However any forcible medical intervention to obtain evidence must be convincingly justified on the facts of a particular case. This is especially true where the procedure is intended to retrieve from inside the individual’s body evidence. Due regard must be had to the seriousness of the offence in issue. The authorities must also demonstrate that they took into consideration alternative methods of recovering the evidence. The procedure must not entail any risk of lasting detriment to a suspect’s health (see Nevmerzchitsky paragraph 94 and 97).

As with interventions carried out for therapeutic purposes, the manner in which a person is subjected to a forcible medical procedure in order to retrieve evidence from his body must not exceed the minimum level of severity prescribed by the Court’s case law. In particular, account has to be taken of whether the person concerned experienced serious physical pain or suffering as a result of the forcible medical intervention.

Another consideration is whether the forcible medical procedure was ordered and administered by medical doctors and whether the person concerned was placed under constant medical supervision (see Ilijkov v. Bulgaria, no. 33977/96).

A further relevant factor is whether the forcible medical intervention resulted in any aggravation of his or her state of health and had lasting consequences for his or her health (Krastanov v. Bulgaria no. 50222/99 paragraph 53).

In the present case, the Court notes that the removal of drugs from the applicant's stomach by administration of emetics could be considered to be required on medical grounds, as he risked death through poisoning. However the emetics were administered in the absence of any prior assessment of the dangers involved in leaving the drug bubble in the applicant's body. The Court concludes that the decision to administer emetics was aimed at securing evidence and not on medical grounds.

The Court is not satisfied that this was a serious offence, evidenced by the fact that the street dealer was storing drugs in his mouth and could not have been selling drugs on a large scale. The Court accepts that it was vital to be able to determine the exact amount and quality of the drugs however it is not satisfied that the forcible administration of emetics was indispensable in the instance case to obtain the evidence. The authorities could simply have waited for the drugs to pass through his system naturally, which is common practice among Council of Europe member States.

The Court finds that the practice of administering emetics poses considerable health risks, granted that it has led to the death of two people in Germany. It observes that the actual use of force has been found to be necessary in Germany only for a small proportion of cases in which emetics have been administered.

The Court observes that the force used against the applicant must have caused him pain and anxiety and the bodily intrusion against his will must have caused mental suffering and was humiliating.

The applicant did not speak German and so the Court are not satisfied that he answered necessary medical questions by the doctor prior to the measure.

The Court finds that the impugned measure attained the minimum level of severity required to bring it within the scope of Article 3. The authorities subjected the applicant to a grave interference with his physical and mental integrity against his will. They forced him to regurgitate in order to retrieve evidence they could equally have obtained by less intrusive methods. The manner in which the measure was carried out was liable to arouse in the applicant feelings of fear, anguish and inferiority that were capable of humiliating and debasing him. Although this was not the intention, the measure was implemented in a way which caused

the applicant both physical pain and mental suffering and therefore has been subjected to inhuman and degrading treatment contrary to Article 3.

Yordanov v. Bulgaria, 56856/00
The applicant complained that he was subjected to inhuman or degrading treatment while being detained.

A CPT report described the conditions might be inhuman and degrading.

Period taken into consideration is three months and six days. According to the CPT report, the cells had no natural light, measured 12 sq. m and were designed to accommodate two detainees while the rest of the cells were 16.5 sq. m intended for three occupants.

The applicant was not permitted to go out of his cell for exercise. The Court found this confinement was not justified by security considerations. There was no justification for the applicant to relieve himself in a bucket in the cell among other cellmates except where allowing visits to the sanitary facilities would pose concrete and serious security risks which the Government failed to submit observations. The food was of poor quality. The detainee had no access to radio, television, or newspapers.

The Court notes that the applicant was a drug addict and contended that he should have been placed in a medical facility.

The Court concludes that the distress and hardship the applicant endured during the period of his detention exceeded the unavoidable level of suffering inherent in detention and the resulting anguish went beyond the threshold of severity under Article 3 and therefore there has been a violation of Article 3.

Khudobin v. Russia, 59696/00
The applicant sold 0.05g of heroin to an undercover police.

While in detention the applicant had epileptic seizures but did not receive qualified or timely medical assistance. No monitoring of his chronic diseases. He was HIV-positive and suffered from a serious mental disorder. This amounted to degrading treatment.

Stitic v. Croatia, 29660/03
The applicant was imprisoned for a series of criminal convictions for drug abuse. The applicant complained about the general conditions of the prison and alleges the prison authorities had

failed to secure him adequate medical care after he had sustained injuries to his head caused by another inmate.

The Court finds that the applicant's conditions of detention, in particular that he had been locked in a damp cell with no access to natural light for about twenty hours per day for 15 months must have been detrimental to his well-being and that this amounted to degrading treatment.

Popovici v. Moldova, 289/04
The applicant was convicted of drugs charges and complained that the conditions of his detention in his administrative detention in remand and the remand centre, were inhuman and degrading.

There was no mattress, pillow, blankets, no sanitary facilities, no natural light and the food was not sufficient. The applicant was not allowed to receive food or parcels from his family unlike the other inmates. The applicant relied on the case of Becciev v. Moldova, in which there was found to be a breach of Article 3. It was found that this was the same detention facility. The Court considers the conditions of detention amounted to a violation of Article 3.

Kotsaftis v. Greece, 39780/06
The applicant was placed in pre-trial detention for possessing drugs. The applicant complained about the conditions of his detention on account of the lack of medical care as he suffered from Hepatitis-B.

Contrary to the findings of an expert report, the applicant had been kept in detention without being given a special diet or treatment with the appropriate drugs, and had not performed a scheduled operation with a delay of one year. The applicant had been detained with 2.4 sq. m of personal space. The authorities had not fulfilled their obligation to safeguard the applicant's physical integrity and there had been a violation of Article 3.

Vladimir Romanov v. Russia, 41461/02
The applicant was arrested in suspicion of having attempted to rob someone. The applicant wrote a statement confessing to the robbery after the police had given them drugs. The applicant was a drug addict and had been provided with medical assistance. The applicant complained that he had been subjected to treatment incompatible with Article 3.

The applicant inflicted injuries caused by force by the prison wardens with rubber truncheons. Force may be used only if indispensible and must not be excessive (see Ivan Vasilev v. Bulgaria,

no. 48130/99 paragraph 63). The Court finds these actions to be disproportionate with the goals they sought to achieve. The inmates refused to leave their cell which may justify the use of physical force but the Court does not accept the use of truncheons was conducive to the desired result.

The force was continued in the corridor and when the applicant was on the floor which the Government did not provide any explanation for. Such treatment was even more salient where the applicant was beaten after he had already complied with the order and left the cell.

In order for a particular form of ill-treatment to qualify as torture, it must have regard to the distinction between this notion and that of inhuman or degrading treatment. Special stigma is attached to deliberate inhuman treatment causing very serious and cruel suffering. There have been cases where treatment was described as torture (see Aksoy v. Turkey, p.2279 paragraph 64; Dikme v. Turkey, no. 20869/92 paragraph 94-96).

The punitive violence was intended to arouse in the applicant feelings of fear and humiliation and to break his physical or moral resistance. The Court finds that the injuries which the applicant sustained establish the existence of serious physical pain and intense mental suffering. This treatment amounts to torture and there has been a violation of Article 3.

Shteyn v. Russia, 23691/06
The applicant was imprisoned for drug trafficking. He complained that the conditions of his detention amounted to inhuman and degrading treatment in breach of Article 3 and that his head had to be shaved.

The applicant was held in cramped conditions and was only allowed out for one hour a day of exercise. The Court finds that the applicant has been kept in cramped conditions sufficient to cause distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and to arouse in him feelings of anguish and inferiority capable of humiliating and debasing him. There has been a violation of Article 3.

Bordikov v. Russia, 921/03
The cells in the remand prison were constantly overcrowded with space not exceeding 2 sq. m per person and as low as 0.9 sw. m. The number of sleeping berths was insufficient and the inmates took turns sleeping. The applicant spent a year and a half in such conditions.

Violation of Article 3.

Okhrimenko v. Ukraine, 53896/07
The applicant was addicted to drugs and complained that the morphine injections he received in prison favoured his relapse into drug dependency, since he had been addicted to drugs until his arrest.

The Court does not find that the morphine injections caused the applicant suffering which reached the minimum threshold of severity within the meaning of Article 3.

Nazarov v. Russia, no. 13591/05
The applicant was convicted for drug charges. He complained the conditions of his detention in the remand prison were poor.

For the majority of his detention he was afforded less than 3 sq. m of personal space, sometimes less than 2 sq. m and other times less than 1.4 sq. m. 3sq. m was enough to find a violation of Article 3.

Skorobogatykh v. Russia, 4871/03
The applicant was convicted of drug charges and complained that the conditions of his detention violated Article 3.

The applicant was detained in a cell with0.78 sq. m per person with only one hour of exercise per day. It is incumbent on the Government to organise their custodial system in such a way as to ensure respect for the dignity of detainees, regardless of financial or logistical difficulties (Mamedova v. Russia, no. 7064/05 paragraph 63; Benediktov v. Russia, no. 106/02 paragraph 37).

Violation of Article 3.

Aleksandr Smirnov v. Ukraine, 38683/06
Violation of Article 3 as regards the adequacy of the investigation.

Kopylov v. Russia, 3933/04
The applicant was arrested on suspicion of drug trafficking, however no drug-related charges were ever brought against him. During his detention he complained that he had been repeatedly ill-treated by the police and the authorities had not undertaken an effective investigation into his allegations of ill-treatment.

The applicant had been punched and kicked, hit with truncheons, subjected to electric shocks, forced to inhale cigarette smoke through a gas mask, was suspended in the air by a rope, jumped on his chest, threatened of rape and to be shot, attempted strangling, spat at, forced to undress and kneel in front of a picture of a policeman whom he had been suspected of killing and to apologise. The force had been aimed at debasing the applicant, driving him into submission and making him confess to a criminal fofence which he had not committed. Violation of Article 3.

Ali v. Romania, 20307/02
The applicant was convicted for drug trafficking and complained that the conditions of detention violated Article 3.

The personal space allocated to the applicant was a cell with ten beds violated the conditions of CPT. In addition, the applicant was deprived of the possibility to maintain an adequate corporal hygiene in prison as hot water was only available once a week for one hour. While the availability of showers and cleaning equipment is a step forward, they remain futile where there is a lack of hot water. Heating in winter was also insufficient.

The Court considers that the conditions of the applicant's detention caused him suffering that exceeded the unavoidable level of suffering inherent in detention and that attained the threshold of degrading treatment proscribed by Article 3.

Romokhov v. Russia, 4532/04
The applicant was arrested on suspicion of drug trafficking during an undercover police operation in which the applicant alleged ill-treatment and that the police planted drugs in his pocket.

The applicant claimed that the population of the cells had severely exceeded their design capacity with less than 2 sq. m of space per inmate and having to take shifts to sleep. Violation of Article 3.

The applicant has further complained about the refusal of medical treatment for his eye problems while in detention, which had caused him to lose his eyesight.

The Court notes that the applicant had not had serious eye problems before his arrest and established that he lost his eyesight because of grave defects and delays in the examination and treatment of his illness by the prison hospital authorities which could have been avoided.

The Court considers that the treatment was inhuman and degrading within the meaning of Article 3, having regard to the findings of the domestic courts. The question remains whether the applicant had lost his "victim status" in respect of the alleged breach of Article 3. The applicant does not lose his status as a victim unless the national authorities have acknowledged and then afforded redress for the breach (see Amuur v. France, paragraph 36; Dalban v. Romania, no. 28114/95 paragraph 44).

In the sphere of medical negligence, the State's positive obligation under the Convention to set up an effective judicial system does not necessarily require the provision of criminal law remedy in every case. The obligation may be satisfied if the legal system affords victims a remedy in the civil courts, enabling any liability of doctors concerned to be established and civil redress to be obtained (see Calvelli and Ciglio v. Italy, no. 32967/96 paragraph 51; Vo v. France, no. 53924/00 paragraph 90). Breaches of Articles 2 or 3 should compensate for the pecuniary and non-pecuniary damage flowing from the breach as part of redress (Z and Others v. UK, no. 29392/95 paragraph 109).

The Court is satisfied that the domestic courts acknowledge the breach.

The parties did not produce any information in respect of non-pecuniary damage awarded to the applicant. The Court is not to set certain monetary figures which would satisfy the requirements of "adequate and sufficient redress" but rather to determine whether the amount of compensation awarded to the applicant was such as to deprive him of "victim status". The conduct of domestic authorities, the consequences of the delayed treatment and the reasons given by the domestic courts in making the award are among the factors which should be taken into account in assessing whether the domestic award could be regarded as adequate and sufficient redress (see Shilbergs, paragraph 74).

The Court observes that €8,862 is substantially lower than the awards made by it in comparable cases where treatment in breach of Article 3 has resulted in very serious and irreversible damage to the applicants' health (Mikheyev v. Russia, no. 77617/01 paragraph 163; Oyal v. Turkey, no. 4864/05 paragraph 105-107).

The absence of a reasonable relationship of proportionality between the amount of the award and the circumstances of the case, the Court finds that the compensation awarded to the applicant did not constitute sufficient redress and there is a violation of Article 3.

Appendix 3

Article 5

Case of Ciulla v. Italy, 11152/84, Judgment 22/02/1989
The applicant was prosecuted in Italy for suspicion of drug offences and was subject to preventive measures through a compulsory residence order that restricted his place of residence for a duration of five years. After several months, the applicant was arrested on a warrant and was ordered to serve eight years imprisonment for drug offences as part of the same charge.

The court ruled violation of Article 5 paragraph 1 for restricting the applicant from his liberty to choose where to live based on mere suspicion of an offence.

Mansur v. Turkey, 16026/90
Article 5 para 3
The Court must determine if detainment pending trial has exceeded a reasonable time. To do this it finds if there exists a genuine requirement of public interest justifying a departure from the rule of respect for individual liberty.
Reasonable suspicion that a person has committed an offence is a condition sine qua non for the validity of continued detention, but after a certain time it no longer suffices. The Court must then establish whether the other grounds cited by the judicial authorities continue to justify the deprivation of liberty (see Wemhoff v. Germany judgment of 27 June 1968, Series A no. 7, pp. 24-25, para 12.; Ringeisen v Austria judgment of 16 July 1971, Series A no. 13, p. 42, para. 104). Where such grounds are “relevant” and “sufficient”, the Court must also ascertain whether the competent national authorities displayed “special diligence” in the conduct of the proceedings (see Matznetter v. Austria judgment of 10 November 1969, Series A no. 10, p. 34, para. 12; B. v. Austria judgment of 28 March 1990, Series A no. 175, p. 16, para. 42; Letellier judgment, p. 18, para 35).
The Government argued that the heavy sentence granted against the applicant would increase the risk of absconding and so detention is justified in this sense. The Court points out that the danger of absconding cannot be gauged solely on the basis of the severity of the sentence. It must be assessed with reference to a number of other relevant factors which may either confirm the existence of a danger of absconding or make it appear so slight that it cannot justify detention pending trial (Letellier judgment, p. 19, para. 43).
Violation of Article 5 para 3

Van der Tang v. Spain, 19382/92
Article 5 para. 3

As established in the Court's case law, the "reasonableness" of pre-trial detention must be assessed in each case according to its special features (Wemhoff v. Germany, p. 24, para. 10). Continued detention can be justified only if there are specific indications of a genuine requirement of public interest which, nowithstanding the presumption of innocence, outweighs the rule of respect for individual liberty. The persistence of reasonable suspicion that the person arrested has 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 suffices; the Court must then establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds are "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings (W. v. Switzerland judgment 26 January 1993, Series A no. 254-A, p. 15, para. 30).

Period to be taken into consideration:
The applicant was detained for three years, one month and twenty-seven days.

Grounds for continued detention
Seriousness of the alleged offences
The Court agrees with the Government that the alleged offences were of a serious nature. However the suspicion of the involvement of the person concerned in serious offences, cannot alone justify a long period of pre-trial detention (see Tomasi v. France judgment 27 August 1992, Series A no. 241-A, p. 35, para. 89).

Danger of absconding
The Court held that the substantial risk of the applicant absconding constituted a relevant and sufficient ground for refusing application for release, which the applicant did not refute.

Conduct of the proceedings
The applicant claimed that his case was a straight forward one and it should have been dealt with more speedily. The Government joined it with the Nécora investigation, which concerned over 50 accused persons.

The Court points out that the right of an accused in custody to have his case examined with all necessary expedition must not hinder the efforts of the courts to carry out their tasks with proper care (see W. v. Switzerland judgment, p. 19, para. 42).
The Court is satisfied that the decision of joinder cannot be regarded as unreasonable. Taken alone the case would not appear to be complex but given the measure by the Spanish courts to join to the Nécora case, it became part of a complex process. The judicial authorities cannot be

said to have displayed a lack of special diligence in handling the applicant's case in the broader context of the Nécora investigation.
No violation

Bizzotto v. Greece, 22126/93
The applicant was convicted for international drug smuggling and was sentenced to six-years in a prison that required appropriate medical facilities to cure the applicant of his drug addiction. The applicant served four-years of his sentence in a prison without these facilities and on his written appeal he was released early.

The applicant argues that the imprisonment was unlawful because it did not correspond to the orders of the Greek court, thus violation Article 5.1 paras (a) and (e).

As in Bouamar v. Belgium, it is incumbent on the State to provide the infrastructure to meet the requirements of Law no. 1729/1987. While in detention, the applicant was unable to consult a doctor or any qualified nursing staff and the only treatment he received was the occasional dose of sleeping tablets.

The Court noted that this case differed from X v. UK (judgment 5 November 1981, Series A no. 46) because this sentence was passed for the purposes of punishment. The Greek court's finding that the applicant was a drug addict and the decision to have him placed in a prison with medical facilities do not in any way affect the main ground for his detention. Accordingly, Article 5.1 para (e) does not apply.

The Court finds that five-years after the Law was passed at the moment of the hearing, that the provisions of setting up prisons with medical facilities remained inoperative. The law, namely section 23, merely lays the arrangements for implementing sentences. While the Court notes that some prison arrangements may be incompatible with Article 3, the cannot in this case have any bearing on the "lawfulness" of a deprivation of liberty and consequently the Court finds no violation.

Aerts v. Belgium, 25357/94
The applicant was institutionalised due to suffering from mental problems due to being addicted to drugs and other personality disorders. Belgian law provides for the detention of mentally ill people in a prison as a provisional measure pending designation to a relevant institution. He claims that this continued detention on remand has no legal basis.

Secondly, and a result of not having been transferred, the applicant complained of being prevented the enjoyments of benefits of the detention regime his condition required. Above all, the treatment he had received had done him harm.

As the applicant was not criminally responsible there could be no conviction within the meaning of Article 5.1 (see X v. UK, judgment 5 November 1981, Series A no. 46, p. 17 article 39). Any deprivation of liberty must be done in keeping with Article 5, namely to protect the individual from arbitrariness (see Winterwerp v. the Netherlands, judgment 24 October 1979, Series A no. 33, p. 17-20 article 35 and 45; Bizzotto v. Greece judgment 15 November 1996, Reports of Judgments and Decisions 1996-V, p. 1738 article 31).

There must be a relationship between the ground of permitted deprivation of liberty and the conditions of detention. The detention of a mental health patient will only be lawful for Article 5.1 (e) if effected in a hospital, clinic or other appropriate institution (see Ashingdane v. UK, judgment 28 May 1985, Series A no. 93, p. 21 article 44).

The applicant had been pending a transfer which had lasted seven months. The Court notes that the length of provisional detention pending transfer is not specified by any provision and must therefore determine whether the continuation of such a lengthy period can be regarded as lawful. The Court ruled that the relationship between the aim of the detention and the conditions in which it took place was deficient and violated Article 5 paragraph 1.

The applicant further submitted that the proceedings in the Court of Appeal had not afforded him access to a tribunal with the power to determine the lawfulness of his continued detention in prison and claimed this violated Article 5 paragraph 4. The Court noted that the applicant was able to apply to the judge responsible for urgent applications, who held that his continued detention in prison was unlawful and accordingly gave judgment in his favour. On appeal by the State the Court of Appeal set aside the impugned decision. However this judgment given in the present case does not mean that in general an application for an injunction is an unsuitable means of securing enjoyment of the right guaranteed by Article 5 paragraph 4. The application for an injunction satisfied the requirements of Article 5.4 and accordingly there has been no breach.

Soumare v. France, 23824/94
The applicant was convicted to 10 years' imprisonment in connection with the trafficking of a large quantity of heroin, and ordered to pay a fine of 2 million francs. The applicant was immediately detained for six months until he would pay the fine, in which he declared

insolvent. The applicant complains that his attempts to appeal the fine was futile and that this violated Article 5.4.

The Court held there was a violation and noted that France had since changed its domestic law to allow for such appeals in future.

Sabeur Ben Ali v. Malta, 35892/97
According to the Court's case-law, the opening part of Article 5.3 requires prompt automatic review by a judicial officer of the merits of the detention (see Aquilina v. Malta judgment of 29 April 1999, op. cot., paragraph 47).

The Court considers that the applicant's appearance before the domestic court was not capable of ensuring respect for Article 5.3 because that court had no power to review automatically the merits of the detention.

The applicant could not obtain ruling by a domestic judicial authority on whether there existed a reasonable suspicion against him which constitutes a breach of Article 5.3.

The applicant further complained that he could not have the lawfulness of his arrest and detention reviewed speedily by a court which breaches Article 5.4.

The Court has considered that a period of approximately eight weeks from the lodging of an application to judgment appears prima facie difficult to reconcile with the notion of "speedily" (see E v. Norway judgment 29 August 1990, Series A no. 181-A, p. 27 paragraph 64).

The Court rejected the Government's contention that the applicant could have obtained a review of the lawfulness of his detention by invoking section 137 of the Criminal Code, as the 48-hour time limit had been exceeded. Neither can the Government accept that a constitutional appeal could satisfy the criteria of "speedily". 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 is lawful (see Aquilina paragraph 55).

It follows that the applicant could not challenge the lawfulness of his detention and there was a violation Article 5.4.

Rehbock v. Slovenia, 29462/95
The applicant claimed his application for release during his detention on remand was not decided speedily.

The Court reiterates that Article 5.4, in guaranteeing to detained persons a right to institute proceedings to challenge the lawfulness of their deprivation of liberty, also proclaims their right, following the institution of such proceedings, to a speedy judicial decision concerning the lawfulness of detention and ordering its termination of it proves unlawful (see Musial v. Poland, no. 24557/94 pragraph 45, ECHR 1999-II). The question whether a person's right under Article 5.4 has respected has to be determined in the light of the circumstances of each case (see RMD v. Switzerland judgment 26 September 1997, Reports 1997-VI, p. 2013 Article 42).

The applicant made two applications for release over a 46-day period, which were both dismissed. The Court finds that the applications for released were not examined speedily as required by Article 5.4 and there has been a violation.

The applicant complained that he had no enforceable right to compensation in respect of the violation of Article 5.4 found above. The Court finds that the applicant's right to compensation in respect of the violation of Article 5.4 of the Convention was not ensured with a sufficient degree of certainty (see Sakik and Others v. Turkey judgment of 26 November 1997, Reports 1997-VII, p. 2626 Article 60). Accordingly there has been a violation of Article 5.5.

Egmez v. Cyprus, 30873/96
The applicant complained of a breach of Article 5.4 because he did not have the opportunity to challenge the lawfulness of his detention because he was under the effects of torture and medication and without an interpreter.

The Court recalls that Article 5.4 requires a procedure of a judicial character with guarantees appropriate to the kind of deprivation of liberty in question (see Megyeri v. Germany judgment 12 May 1992, Series A no. 237-A P. 11-12 article 22; Bouamar v. Belgium judgment 29 February 1988, Series A no. 129 p. 24 Article 60). It is not excluded that a system of automatic periodic review of the lawfulness of the detention by a court may ensure compliance with the requirements of Article 5.4 (see Megyeri judgment).

The following hearing in the hospital was reviewed twice, automatically the first time and further to an application for provisional release the second time. The applicant was legally represented on both occasions. No breach.

Waite v. UK, 53236/99
The applicant complained that he had no access to an oral hearing following the decision by the Parole Board to recall him to prison following concerns to his conduct which included misuse of

drugs, a sexual relationship with a minor, attempted suicide and failure to keep contact with his supervising probation officer.

The Court finds that the applicant was entitled under Article 5.4 to proceedings to have any issues of lawfulness of his re-detention determined by a court. No oral hearing took place and the applicant had no opportunity to examine or cross-examine witnesses relevant to the allegations that his conduct posed a risk to the public.

Article 5.4 is a guarantee of a fair procedure for reviewing the lawfulness of detention and an applicant is not required as a precondition to enjoying that protection, to show that on the facts of his case he stands any particular chance of success in obtaining his release. (see Singh v. UK, judgment 21 February 1996, Reports of Judgments and Decisions, 1996-I, paragraph 39). Violation of 5.4.

The applicant further complained that he had no enforceable right in accordance with Article 5.5. No possibility of obtaining compensation existed at that time. The applicability of Article 5.5 is not dependent on a domestic finding of unlawfulness or proof that but for the breach the person would have been released (see Thynne, Wilson and Gunnell, p. 31 paragraph 82). Violation.

Kadem v. Malta, 55263/00
The applicant is from the Netherlands and was arrested on 25 October 1998 on an arrest warrant with request for extradition made by the Kingdom of Morocco. The request was relayed to Malta through Interpol.

The applicant complains that there were no means available to him to challenge speedily his arrest and detention, invoking Article 5.4.
The evidence before the Court does not disclose that the Magistrates' Court before which the applicant filed his claim for immediate release had the power to review the lawfulness of its own motion (see Aquilina v. Malta judgment 29 April 1999, p. 243 paragraph 52).

The Magistrate's Court made a ruling on the applicant's plea of unlawfulness after 17 days. This was not speedily as required by Article 5.4 (see Rehbock v. Slovenia, paragraph 82-86). The Court then ascertained that the applicant did not have at his disposal other remedies for challenging the lawfulness of his detention and therefore 5.4 was violated.

Imre v. Hungary, 53129/99

The applicant was detained for drug trafficking charges and held in remand. He alleged violation of Article 5.3 for excessive detention.

Period to be taken into consideration

The applicant was arrested on 12 June 1997 and detained on remand on 14 June 1997 until 6 December 2000 when he started serving his prison sentence and complained of a breach of Article 5.3. The Court does not take into account 10 April 2000 until 6 December 2000. In view of the link between Article 5.3 and paragraph 1 (c), a person convicted at first instance cannot be regarded as being detained "for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence" but is provided by Article 5.1 (a), which authorizes deprivation of liberty "after conviction by a competent court" (see B v. Austria, judgment 28 March 1990, Series A no. 175, pp. 14-6 articles 36-39). Accordingly the Court will consider two years, nine months and 26 days.

Reasonableness of the length of detention

Continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty laid down in Article 5 (see Labita v. Italy, no. 26772/95 article 152).

The judicial authorities are responsible to pay due regard to the principle of the presumption of innocence and examine all the facts on the requirement of public interest justifying departure from Article 5. It is on the basis of the reasons given in these decisions and of the facts stated by the applicant in his appeals that the Court is called upon to decide whether or not there has been a violation of Article 5.3 (see Muller v. France, judgment 17 March 1997, p. 388 paragraph 35).

Where grounds justifying continued deprivation of liberty are "relevant" and "sufficient", the Court must also be satisfied that the national authorities displayed "special diligence" in the conduct of the proceedings.

The principle reason for the applicant's detention on remand was the danger of collusion which the Court is satisfied with.

However with the passage of time this ground became less relevant, particularly as the applicant's two accomplices were later arrested. The courts based their prolongations decisions primarily on the risk that the applicant might abscond, which the Court found is not sufficient to justify the applicant being held in detention for this period of time. Violation.

J.G. v. Poland, 36258/97
The applicant was charged with drug smuggling and was detained on remand in view of the reasonable suspicion that he had committed the offence and the risk that he might obstruct the proper conduct of the proceedings.

The applicant complained that his pre-trial has been inordinately long and breached Article 5.3.

Period to be taken into consideration:
2 yrs, 2 months and 6 days.

Reasonableness of the detention:
The Court observes that the judicial authorities relied on three principal grounds, namely the reasonable suspicion that the applicant had committed the offence with which he had been charged, the serious nature of that offence and the need to ensure the proper conduct of the proceedings.

The Court accepted that the serious offence of the charges, the process of obtaining evidence and the risk of collusion warranted his detention. However the Court heard all the evidence by 1 yr and 8 months and the applicant had not made any attempt to tamper with evidence up to this point.

The Court emphasizes that under Article 5.3 the authorities are obliged to consider alternative measures of ensuring his appearance at trial. The provision proclaims the right to "trial within a reasonable time or to release pending trial" and also that "release may be conditioned by guarantees to appear for trial" (see Neumeister v. Austria judgment 27 June 1968, Series A no. 8, p. 3 paragraph 3; and Jablonski v. Poland judgment, no. 33492/06 paragraph 83).

The authorities did not envisage any other guarantees that he would appear for trial. Nor did they give any consideration to the possibility of ensuring his presence at trial by imposing on him other "preventive measures" such as bail or police supervision.

The Court points out that the degree of risk of absconding, hiding or evading sentence cannot be gauged solely on the basis of the severity of the offence and anticipated sentence (Muller v. France, paragraph 43).

The grounds for pre-trial detention were not "sufficient" and relevant" and there was a violation of Article 5.3.

Mitev v. Bulgaria, 40063/98
The applicant was addicted to drugs and convicted of theft. He complained that he had not been brought before a judge or other exercising judicial power and that he had been deprived of liberty unlawfully and without justification.

Alleged violation of right under Article 5.3 to be brought before a judge or other officer authorized by law to exercise judicial power
The Court recalls that in cases of Assenov and Others v. Bulgaria (judgment 28 October 1998) and Nikolova v. Bulgaria (no. 31195/96), it found that neither investigators before whom accused person were brought, nor prosecutors who approved detention orders, could be considered to be "officers authorized by law to exercise judicial power" within the meaning of Article 5.3 (see also H.B. v. Switzerland, no. 26899/95, 5 April 2001).

In the present case, the applicant was brought before an investigator or a prosecutor however, the investigator did not have power to make a binding decision to detain him and in any event neither the investigator nor the prosecutor who authorized the detention were sufficiently independent and impartial for the purposes of Article 5.3, in view of the practical role they played in the prosecution and their potential participation as a party to the criminal proceedings. The Court refers to its analysis of the relevant domestic law contained in Nikolova (paragraph 28, 29 and 45-53). It follows there has been a violation of the applicant's right to be brought before a judge or other officer authorized by law to exercise judicial power within the meaning of Article 5.3.

Alleged violation of right to trial within reasonable time or to release pending trial in accordance with Article 5.3.
The applicant spent three separate periods in pre-trial detention. Where an accused person is detained for two or more separate periods pending trial, the reasonable time guarantee of Article 5.3 requires a global assessment of the cumulated period (see Kemmache v. France judgment 27 November 1991 paragraph 44; Mironov v. Bulgaria no. 30381/96, paragraph 67; Vaccaro v. Italy, no. 41852/98 paragraph 31-33). The Court will proceed on the basis that the relevant period was at least three years and eight months.

It has not been disputed that the applicant was detained on a reasonable suspicion that he had committed several offences. There was a danger of him committing offences or absconding if released.

Many months elapsed after each referral and the discrepancies in the indictment prepared by the investigators were not remedied expeditiously. The authorities did not express any concern about the fact that the investigators' and prosecutors' omissions resulted in the applicant's lengthy pre-trial detention. The Court finds that there has been a violation of the applicant's right to a trial within a reasonable time or release pending trial as guaranteed by Article 5.3.

Complaint under Article 5.1

The applicant stated that his continued detention following the District Court's decision to release him was unlawful and contrary to Article 5.1.

In accordance with the Court's case-law, only a narrow interpretation of the list of exceptions to the right to liberty secured in Article 5.1 is consistent with the aim to ensure that no one is arbitrarily deprived of his liberty. It is incumbent on the Government to provide a detailed account of the relevant facts and administrative formalities connected with release cannot justify a delay of more than several hours (see Labita article 170; Giulia Manzoni v. Italy, judgment 1 July 1997; Nikolov v. Bularia paragraph 80-85).

The authorities failed to verify carefully the legal grounds for the applicant's continued deprivation of liberty. As this was not done the applicant was detained unlawfully for 28 additional days despite his released had been ordered by the District Court. It follows there has been a violation of Article 5.1.

The applicant complained that two of his judicial appeals against detention were never examined and that his third appeal was not examined speedily, which he claims resulted in the violation of Article 5.4.

In accordance with the Court's case-law, Article 5.4, in guaranteeing to persons arrested or detained a right to institute proceedings to challenge the lawfulness of their deprivation of liberty, also proclaims their 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 (see Baranowski v. Poland, no. 28358/95). The requirements that decisions be taken "speedily" must, as is the case for the "reasonable time" stipulation in Articles 5.3 and 6.1, be determined in the light of the circumstances of each case (see G.B. v. Switzerland no. 27426/95 paragraph 33).

The applicant's appeal against his detention was only examined 44-days later which the governmedn have not explained. The Court finds there has been a violation of Article 5.4.

The applicant submitted that Bulgarian law did not provide for an enforceable right to compensation in violations of Article 5.

Alleged lack of compensation for the violations that occurred during the applicant's pre-trial detention and until his release was ordered

During that period there were violations of the applicant's rights to be brought promptly before a judge or other officer authorized by law to exercise judicial power, his right to trial within a reasonable time or releasing pending trial and his right to obtain speedily decision by a court on the lawfulness of his deprivation of liberty.

According to domestic law, a person who has been remanded in custody may seek compensation only if the detention order was unlawful. This law has only been applied in cases where the criminal proceedings were terminated on the basis that the charges were unproven or where the accused was acquitted.

In the present case the applicant's pre-trial detention until the District Court's decision to release him was not considered by domestic courts as being unlawful and there was thus no right to compensation.

It follows that the domestic law does not provide for an enforceable right to compensation for the violations of Article 5 and there is a violation of Article 5.5.

Romanov v. Russia, 63993/00
Article 5.3
The applicant complained that his detention on remand had been excessive.

Period to be taken into consideration

The period to be taken into consideration begins on the day the accused is taken into custody and ends on the day when the charge is determined (Wemhoff v. Germany, judgment, Series A no. 7, p. 23 paragraph 9) which is one year, five months and 23 days.

Reasonableness of the length of detention

The question of whether or not a period of detention is reasonable cannot be assessed in the abstract. This must be examined in each case according to its special features. Continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty laid down in Article 5.

Reasonable suspicion that the person has committed an offence does not suffice after a certain lapse of time. Then the Court must establish whether grounds were “relevant” and “sufficient”. The complexity and special characteristics of the investigation are factors to be considered in this respect (see Scott v. Spain, pp. 2399-00, paragraph 74; I.A. v. France, p. 2978 paragraph 102).

Grounds for detention

The authorities defence for detention was for the suppression of the crime, for the risk of his absconding and his personality. The Court refused the applicant on the basis of the nature of the crime which means the seriousness.

The Court reiterates that the danger of absconding cannot be gauged solely on the basis of the severity of the sentence risked; it must be assessed with reference to a number of other relevant factors which may either confirm the existence of a danger of absconding or make it appear so slight that it cannot justify detention pending trial (see Tomasi v. France, p. 31 paragraph 98). In the present case there was no proof made to show the existence of the danger of the applicant’s absconding. Nor did it explain what peculiarities of the applicant’s personality warranted his detention on remand.

Regarding the danger posed to the public, there does not appear that there was persuasive consideration in the case as to any risk and even if so it must have disappeared after a certain time (Tomasi, p. 36 paragraph 91). This undoubtedly did not suffice to justify the applicant’s detention for more than a year.

The seriousness of the alleged offence as the only ground for the continued detention could not justify a long period of pre-trial detention (Scott v. Spain, p. 2401 paragraph 78).

The reasons relied on by the investigating authority and their decisions were not sufficient to justify the applicant’s detention.

Conduct of the proceedings

It took the police four months to investigate the case. The psychiatric examination found that the applicant had committed the crime in a deranged state of mind and did not need to be placed in a mental asylum, the treatment being sufficient. The domestic court ordered further examination without seeing the applicant and without giving the defence a chance to object without any reasons given for such a decision. Therefore the length of proceedings is neither complex nor a result of the conduct of the applicant but due to the lack of diligence and expedition on the part of the domestic court.

Violation of Article 5.3

Khudoyorov v. Russia, 6847/02
The applicant complained under Article 5.1 that his detention on remand was not lawful.

Detention on remand from 4 May to 8 August 2001
The issue to be determined is whether the detention in that period was "lawful", including whether it complied with "a procedure prescribed by law". The Court reiterates that a period of detention will in principle be lawful if carried out pursuant to a court order. A subsequent finding that the court erred under domestic law in making the order will not necessarily retrospectively affect the validity of the intervening period of detention. There is no violation where persons convicted complain that their convictions were found by the courts to have been based on errors of fact or law (see Benham v. UK, paragraph 42).

In the present case the Court finds that the applicant's detention cannot be said to have been arbitrary as the court gave certain grounds justifying the continued detention on remand. No violation.

Detention on remand from 8 August to 4 September 2001
The Supreme Court held that the preventive measure imposed on the applicant "should remain unchanged".
The Court notes that in several cases against Lithuania it found the decision to maintain a preventive measure "unchanged" had not breached Article 5.1 in so far as the trial court "had acted within its jurisdiction… had power to make an appropriate order" (Jecius paragraph 69; Stasaitis v. Lithuania, no. 47679/99; Karalevicius v. Lithuania, no. 53254/99). In Stasaitis, "the absence of any grounds given by the judicial authorities in their decisions authorizing detention for a prolonfed period of time may be incompatible with the principle of the protection from arbitrariness enshrined in Article 5.1" (paragraph 67).

The Supreme Court did not give any reasons for its decision to remand the applicant in custody, nor did it set a time-limit for the continued detention or for a re-examination. For more than a year the applicant remained in a state of uncertainty as to the grounds for his detention. The Court considers the Supreme Court's decision did not comply with the requirements of clarity, foreseeability and protection from arbitratiness, which together constitute the essential elements of the "lawfulness" of detention within Article 5.1.

Furthermore any *ex post facto* authorization of detention on remand is incompatible with the "right to security of person" as it is necessarily tainted with arbitrariness. Permitting a prisoner

to languish in detention on remand without a judicial decision based on concrete grounds and without setting a time-limit would be tantamount to overriding Article 5.
Violation of Article 5.1 for the applicant's detention on remand from 8 August 2001 to 9 January 2002 and from 13 March 2002 to 4 December 2002.

The applicant complained under Article 5.3 that his detention on remand had been excessively long.

The Court accepts that the applicant's detention may initially have been warranted by a reasonable suspicion that he was involved in drug-trafficking. The need to ensure the proper conduct of the investigation and to prevent the applicant from absconding could justify keeping him in custody.

However at no point in the proceedings did the domestic authorities consider whether the length of the applicant's detention had exceeded a "reasonable time" after the applicant had spent more than two years in custody.
The court extended the applicant's detention seven times, five of which was referred to the need "to secure… the enforcement of the conviction". The Court notes that this ground is only "after conviction by a competent court" and in the present case the applicant had not been convicted.

As regards to the existence of a risk of absconding, the Court reiterates that such a danger cannot be gauged solely on the basis of the severity of the sentence faced. It must be assessed with reference to a number of other relevant factors which may either confirm the existence of a danger of absconding or make it appear so slight that it cannot justify detention pending trial (see Panchenko, paragraph 106; Letellier v. France, paragraph 43). The courts gave no reason why they considered risk of absconding to be decisive. The existence of a risk was not established.

The authorities did not consider the possibility of ensuring his presence at trial by the use of other "preventive measures" such as conditional bail or an undertaking not to leave the town, which is provided for by Russian law. The authorities are obliged to consider alternative measures of ensuring his appearance at trial. The provision laws down that "release may be conditioned by guarantees to appear for trial" (see Sulaoja v. Estonia, no. 55939/00 paragraph 64; Jablonski v. Poland, no. 33492/96 paragraph 83).

It is of particular concern to the court that the Russian authorities persistently used a stereotyped summary formula to justify extensions of detention.

The Court observes an established practice of issuing collective extension orders, extending the detention of several co-defendants at the same time and thereby ignoring the personal circumstances of individual detainees. This practice is incompatible with Article 5.3.

By failing to address concrete facts or consider alternative “preventive measures” and by relying on the gravity of the charges, the grounds for detention cannot be regarded as “relevant and sufficient”. In addition the authorities did not display “special diligence” and caused delays. Violation of Article 5.3.

The Court finds a violation of Article 5.4 on account of:
-The length of the proceedings on the applicant’s appeal against the decision and to examine “speedily” his application for release, to examine his appeals against the extention and failure to consider the merits of his appeals against further decisions on 18 November and 4 December 2002.

Adamiak v. Poland, 20758/03
The applicants were involved in the import and trafficking of drugs by an organized criminal group and detained pre-trial for five years.

The Court considered that the reasons given by the domestic courts to justify extending the applicant’s detention had been insufficient with the passage of time to justify deprivation of liberty and therefore violated Article 5.3.

Niecko v. Poland, 3500/04
The applicant was arrested for suspicion of supplying drugs, leading an organized criminal group, ordering murder and extortion. He was placed in detention on remand which he complained its length violated Article 5.3. The applicant was detained on remand for over 4 years.

The Court considers that with the passage of time, the grounds for detention for the gathering of evidence became less relevant. The risk of obstructing proceedings, severity of the penality and complexity of the case did not justify the length of detention and there has been a breach of Article 5.3.

Popovici v. Moldova, 289/04
The applicant argued that the reasons for detaining him pending trial were general and formulaic and could not be considered as relevant and sufficient for the purpose of Article 5.3.

The domestic court did not show reasons why they considered the allegations that the applicant could abscond or obstruct the investigation to be well-founded. This is similar to Becciev, paragraph 61-62 and Sarban paragraph 100-101 where there were similarly insufficient reasons given by the courts for the applicants' detention. Violation of Article 5.3.

Medvedyev and Others v. France, 3394/03
In an attempt to intercept a ship from Combodia believed to be carrying drugs, the French navy instructed the ship to stop. In the meantime crew dumped parcels overboard. One parcel was retrieved which contained 80kg of cocaine. The applicants complained that they had been detained on board for 13 days without detention being supervised by any judicial authority without being brought "promptly" before a judge.

The Court considers that it cannot be deduced from the agreement by Cambodia to search the ship that the detention in issue had a legal basis.

The Government asserted that the public prosecutor supervised the detention, however according to the Court the public prosecutor is not a "competent legal authority" as he lacks the independence in respect of the executive to quality as such (see Schiesser v. Switzerland, article 29-30). It cannot be said that the applicants were deprived of their liberty in accordance with a procedure prescribed by law and there has been a violation of Article 5.1.

The applicants noted that they were not brought before a judge until after 15 days deprivation of liberty.

In the Rigopoulos decision, such a lapse of time is in principle not compatible with the concept of promptly. Only wholly exceptional circumstances could justify such a period. There was no violation found in Rigopoulos because the distance for the ship to travel to Spanish territory was 5,500 km. This case has a similar distance and there is no violation found of Article 5.3.

Dublas v. Poland, 48247/06
The applicant was placed in pre-trial detention for suspicion of drug dealing which he complains had been excessive. It lasted two years, give months and 13 days.

No special features to the case that would lead to difficulties for the authorities to determine the facts and mount a case (see Celejewski article 37 and Malik v. Poland no. 57477/00 paragraph 49).

While the length of the sentence is a relevant element in the assessment of the risk of absconding, the gravity of the charges cannot by itself justify long periods of pre-trial detention (see Michta v. Poland, no. 13425/02 paragraph 49).

The authorities are obliged to consider alternative means of guaranteeing his appearance at the trial. The authorities cannot justify the period of the applicant's detention and there has been a violation of Article 5.3.

Nikolay Kucherenko v. Ukraine, 16447/04
The applicant was detained on drug charges for 5 months which the Court found violated Article 5.1 for detaining the applicant for an indeterminate period of time without any judicial authorization.

Stephens v. Malta, 11956/07
The applicant was arrested and detained in Spain following an extradition request by Malta pursuant to an arrest warrant in relation to drug smuggling. The applicant complained that he had not been "lawfully arrested" on a reasonable suspicion of having committed an offence and that his entire detention had violated Article 5.1.

The Court observes that the failure to comply with the "procedure prescribed by law" requirement at the time of the applicant's arrest was acknowledged by the domestic courts because his arrest warrant was devoid of any legal basis, since it had been issued by a court acting ultra vires. Malta accepted responsibility for the violation. The Court finds a violation of Article 5.1.

Shteyn v. Russia, 23691/06
The applicant alleged that the extension of his detention had been unlawful under Article 5.1 because request for extension had been lodged too late and had not been approved by the Prosecutor General or his deputy.

The Court notes that neither the prosecutor's extension request nor the order itself contained any indication as to how the overall period of detention was calculated. The absence of sufficiently precise rules concerning the legal grounds for detention following the return of the case to the prosecutor seriously affected the "lawfulness" of the applicant's detention since the

national courts' reasoning was premised on the fact that the applicant's detention as extended would not exceed the 18 months limit.
Violation of Article 5.1.

He further complained under Article 5.3 that his detention on remand had been excessively long and lacked sufficient justification.

The detention on remand on suspicion of drug trafficking following the seizure of a large quantity of drugs in his possession satisfied that suspicion was reasonable and detention was justified. However with the lapse of time this no longer suffices. Were such grounds "relevant" and "sufficient" the Court must also be satisfied that the national authorities displayed "special diligence" in the conduct of the proceedings.

The Court was not provided any evidence to support the Government's claims that the applicant was a member of a criminal gang. The Court found there were no risk of absconding and no risk of reoffending. By failing to refer to concrete relevant facts or consider alternative "preventive measures", the grounds for extension were not "sufficient". Violation of Article 5.3.

The applicant complained under Article 5.4 that his appeals were not examined speedily.

There is a special need for a swift decision determining the lawfulness of detention in cases where a trial is pending, because the defendant should benefit fully from the principle of the presumption of innocence (Illowiecki v. Poland, no. 27504/95 paragraph 76).

The delays were not caused by the applicant. The appeals against previous detention were only examined after a new detention was issued. These delays were not compatible with the "speediness" requirement of Article 5.4 and there was a violation.

Jarkiewicz v. Poland, 23623/07
The applicant was suspected of drug crimes and complained that the length of his detention on remand had been excessive under Article 5.3.

The Court did not agree with the courts' argument that the applicant was particularly inclined to attempt to induce his co-defendants or witnesses to give false testimony. Even if true, it lost importance with the passage of time when most of the evidence should have been secured.
Violation of Article 5.3.

Shaposhnikov v. Russia, 8998/05

The applicant was arrested on suspicion of drug trafficking and complained under Article 5.1 that his detention between 4 to 13 January 2005 had been unlawful.

A trial court must act within its jurisdiction, have the power to make an appropriate order and give reasons for its decision to maintain the custodial measure (see Korchuganova v. Russia, no. 75039/01, paragraph 62).

The Russian legal framework consists of detention “pending investigation” and detention “pending trial”. Since the legal judgment did not cite any legal basis, it is unclear which rules applied. There is an absence of sufficiently precise rules concerning the legal grounds for detention between the return of the case to the prosecutor and the receipt o the file by the prosecution authority. Therefore the applicant was placed in a situation of uncertainty as to the exact duration of his continued detention at that stage (see Shteyn v. Russia, paragraph 92).

There was also no reasons given by judicial authorities in their decisions authorizing detention which is incompatible with the principle of protection from arbitrariness under Article 5.1.

Lastly the domestic authorities did not interpret the detention order uniformly. Violation of Article 5.1.

Kornev and Karpenko v. Ukraine, 17444/04
The applicant was arrested for supplying drugs to an undercover agent. The applicant complained under Article 5.3 that he was not brought before the judge for six days after his arrest.

Article 5.3 requires that a person shall be brought promptly before a judge or other judicial officer after being arrested or detained and the text does not provide for any possible exceptions from that requirement, not even on grounds of prior judicial involvement. The judicial officer must also hear the detained person before taking the appropriate decision (De Jong, Baljet and Van den Brink, paragraph 51).

In the present case, the applicant failed to appear before the court when the decision concerning his arrest was taken. There is no requirement that a person who is evading court proceedings should be present at the court hearing (Harkmann v. Estonia, no. 2192/03). However the first applicant had no chance to present the court with possible personal or other reasons militating against his detention after his arrest.

The period of eight days' detention is incompatible with "promptness" under Article 5.3 and there is a violation.

Rudenko v. Ukraine, 5797/05
The applicant was arrested on suspicion of drug smuggling and complained about the length of his pre-trial detention.

The term of the applicant's detention had expired and because he was in the process of studying the case file, his detention during that period was not required to be authorized by any decision under domestic law. Detention resumed for three days after which there was a period of inactivity for several weeks until the case was sent to the trial court.

The Court finds a violation of Article 5.1.

The Court finds a further violation of Article 5.3 for pre-trial detention lasting three years, three months and 23 days.

Appendix 4

Article 6

Violation of Article 6 para 3 (c)
Case of Quaranta v. Switzerland 12744/87

Two conditions are attached to the right to free legal assistance

1. Lack of "sufficient means to pay for legal assistance" which is not disputed in this case
2. "Interests of justice" which uses the following criteria:
    a. Seriousness of the offence and severity of sentence: charge of use and traffic in drugs with up to 3 years sentence.
    b. Complexity of the case: the establishment of the facts were straightforward i n this case but the accused committed the offence during probation and so a defence lawyer would have created the best conditions for defence.
    c. Personal situation of applicant: young adult of foreign origin, underprivileged, no occupational training, previous convictions, drug user, living on social security.

Case of Ludi v. Switzerland, judgment of 15/06/1992, 12433/86
Article 6 paras 1 and 3.
The applicant maintained that his drug trafficking conviction was primarily based on the undercover agent's report, and yet the applicant could not at any stage during the proceedings question the witness.

The Court is to ascertain whether the proceedings, considered as a whole, including the way in which the evidence was submitted, were fair (see *Vidal v. Belgium,* judgment 22 April 1992, Series A no. 235-B, pp. 32-33 para 33).

The Court agrees that Mr Ludi was deprived throughout the proceedings of checking or casting doubt on the witness' report.

Consistent with the Court's case law, all evidence must be produced in the presence of the accused at a public hearing with a view to adversarial argument. Exceptions to this principle must not infringe the rights of the defence. Paras 1 and 3 of Article 6 require that the defendant be given adequate and propoer opportunity to challenge and question a witness against him, either when he makes his statements or at a later stage (see Asch v. Austria, judgment 26 April 1991, Series A no. 203, p. 10 para 27).

The Court distinguishes this case from Kostovski v. Netherlands and Windisch v. Austria where convictions were based on statements made by anonymous witnesses which was a police officer. In the present case the applicant knows the identity of the witness based on them having met on five occasions.

It would have been possible for the investigating judge to allow for a fair trial in a way which took into account the interest of the police authorities. There was therefore a violation of Article 6 para 3 (d) in conjunction with para 1.

Pham Hoang v. France, Judgment of 25/09/1992, 13191/87
The applicant was never in possession of heroin but was present in the house where international drug trafficker had brought 5kg of caffeine. The Court of Appeal noted that although there was no possession of illegal drugs, this was only due to the intervention of the police and thus for reasons beyond the applicants control. The ECrtHR was content that the Court of Appeal duly weighed the evidence and based its finding of guilt on it and was not incompatible with Article 6 paras 1 and 2. No violation.

Article 6 para 3
The applicant complained that in the Court's determination of appeal, he had been unable to secure legal representation, which was relevant due to his lack of resources upon his attempts of appeal. The Chairman of the Conseil d'État and Court of Cassation Bar, refused it without even ascertaining whether there was a serious ground of appeal.

The Court observes free legal assistance is among one element of the concept of a fair trial in criminal proceedings (see Quarante v. Switzerland judgment of 24/05/1991, Series A no. 205 p. 16 para 27). Article 6 para 3 (c) attaches two conditions to this rights. Firstly the lack of "sufficient means to pay for legal assistance" is not in dispute in this case. Secondly it is necessary to determine whether the "interests of justice" required that the applicant be granted such assistance.

The applicant in making attempts to challenge the conviction had no legal representation and could not be reasonably expected to understand complex legal reasoning without any legal training. The interests of justice accordingly required a lawyer to be officially assigned to the case, therefore there is a breach of Article 6 para 3 (c).

Messina v. Italy, 13803/93
Man imprisoned over allegations of mafia involvement and drug offences.

"Reasonable time" as required under Article 6 para 1 is determined with reference to the criteria laid down in the Court's case law and in the light of the circumstances of the case. While the Court accepts that the judicial authorities must have encountered difficulties linked to the number of person to be questioned and the number of witnesses to be heard, as well as the need for evidence to be taken on commission; the Court cannot regard seven years as reasonable. Therefore there is a violation of Article 6 para 1.

Saidi v. France, 14647/89

Article 6 paragraphs 1 and 3 (d)

The applicant was convicted for the involuntary murder of two people who overdosed from heroin. He complained that his conviction was based solely on witness statements without any additional prosecution evidence. As such he requested a confrontation with the witnesses to challenge their statements which was refused by the judicial authorities.

The Court reiterates that the taking of evidence is governed primarily by the rules of domestic law and that it is in principle for the national courts to assess the evidence before them. The Court's task under the Convention is to ascertain whether the proceedings in their entirety were fair (see Edwards v. UK, judgment 16 December 1992, Series A no. 247-B, pp. 34-35, para 34).

The use of evidence of statements is not in itself inconsistent with Article 6 paragraphs 3 (d) and 1, provided 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 (see Igro v. Italy, judgment of 19 February 1991, Series A no. 194-A, p. 12, para. 34).

The Court rules there has been a violation of Article 6 paras. 1 and 3 (d)

Imbroscia v. Switzerland, 13972/88

This applicant was convicted of assisting in smuggling 1.3kg of heroin from Bangkok to Zurich, although he did not possess the drugs personally. The police investigation began on the 3rd February. The applicant immediately requested a lawyer. On the 8th February he found his own lawyer who was not invited to any police interviews and who did not request to be present and did not visit the applicant. The lawyer discontinued their services on the 25th February and on the 27th the applicant was assigned a new lawyer.

The Court notes that fair trial applies to pre-trial proceedings. "reasonable time" begins from the moment a charge comes into being (see Wemhoff v. Germany, judgment 27 June 1968,

Series A no. 7 pp 26-27, para 19; and Messina v. Italy, judgment 26 February 1993, Series A no. 257-H, p. 103, para 25). Comparatively, Article 6 has applied to discharged cases and cases ending at the investigation stage (see Viezzer v. Italy, judgment of 19 February 1991, Series A no. 196-B, p. 21, paras 15-17).

Furthermore Article 6 may be relevant before a case is sent for trial if the trial is likely to be prejudiced by an initial failure to comply with it (see Engel and Others v. the Netherlands, 8 June 1976, Series A no. 22, pp. 38-39, para. 91; Luedicke, Belkacem and Koc v. Germany, 28 November 1978, Series A no. 29, p. 20, para. 48, etc.).

The Court must ascertain whether the investigation is consistent with the requirements of a fair trial. The Convention is designed to "guarantee not rights that are theoretical or illusory but rights that are practical and effective" and that assigning legal counsel is not in itself effective for assisting an accused (see Artico v. Italy, judgment 13 May 1980, Series A no. 37, p. 16, para. 33).

"A State cannot be held responsible for every shortcoming on the part of a lwayer appointed for legal aid purposes (see Kamasinski v. Austria, judgment 19 December 1989, Series A no. 168, p. 33, para. 65). The conduct of the defence is essentially a matter between the defendant and his representative and under Article 6 para. 3 (c) the Contracting States are required to intervene only if a failure by counsel to provide effective representation is manifest or sufficiently brought to their attention which it was not in this case.
No violation.

Pelladoah v. the Netherlands, 16737/90
The applicant, a diplomat, was convicted of possessing 200kg of heroin without criminal intent in Schiphol airport. The applicant served six months imprisonment as a result. At a later date the case was reopened with new charges against the applicant for possession of heroin with criminal intent and he was granted a nine-year prison sentence. Neither the applicant nor the lawyer were present at the case. The lawyer requested permission to represent the applicant through every stage and it was repeatedly rejected on grounds that these were new charges unrelated to the previous charge.

The applicant complained that his counsel had not been allowed to conduct a defence in his absence, relying on Article 6 paras 1 and 3 (c).

The Court notes that the complaint concerns the Court of Appeal's decision without the applicant's counsel, whom he wanted to conduct his defence and who attended the trial with this intention. The gravity of the sentence is also a factor.

Like in the Poitrimol case, the present case concerns a criminal appeal by way of rehearing and in the interests of a fair and just criminal process it is of capital importance that the accused should appear at his trial. In this case, the accused must be adequately defended, particularly as no objection can be filed against a default judgment given on appeal under Netherlands law. **For this right to be practical and effective, and not merely theoretical**, its exercise should not be made dependent on the fulfilment of unduly formalistic conditions.
Violation of Article 6 paras 1 and 3 (c)

Air Canada v UK, Judgement 18465/91
The applicant complained that its civil rights and obligations had been determined by the procedures under the 1979 Act and that neither the condemnation proceedings nor the remedy of judicial review satisfy Article 6 paragraph 1. The proportionality of the measures could not be examined in judicial review proceedings and the wider the statutory provisions under scrutiny the narrower the scope of review.

The Court ruled that the seizure required the Commissioners to take proceedings which were limited to the determination of specified questions of law. In which the requirement of access to court was satisfied. Concerning the fine, Air Canada never exercised the remedy available by bringing judicial review proceedings to contest the payment. As such the English courts would have been capable of satisfying Article 6.

Doorson v. The Netherlands, 20524/92
The Court's task is not to rule as the whether statements of witnesses were properly admitted as evidence, which is a matter for regulation by national law, but rather to ascertain whether the proceedings as a whole, including the way in which evidence was taken, were fair (see Kostovski judgment, p. 19, para 39).

The applicant complained that he was not able to cross-examine witnesses Y. 15 and Y.16 who's statements amounted to evidence in a trial charging the applicant with drug trafficking. The judge refrained the applicant from cross-examining the remaining witnesses to protect the anonymity of the witnesses. The Court ruled that there was no issue in relation to the hearing of Y. 15 and 16 in the absence of the applicant's counsel during preliminary judicial investigation, since the two witnesses were heard in counsel's presence on appeal.

Use of anonymous witnesses is not under all circumstances incompatible with the Convention (see Kostovi judgement).

No violation of Article 6 para 1 taken together with para 3 (d) if it is established that the handicap of the defence is "counterbalanced" by the procedures followed by the judicial authorities. The case differs from Kostovski because the defence was permitted to ask questions to the witnesses except in so far that they might lead to the disclosure of their identity. However even when "counterbalancing" procedures are found to compensate this handicap, a conviction should not be based either solely or to a decisive extent on anonymous statements. This is not the case here.

The applicant complained about the reliance on the evidence of *witness R* who was never brought before the court for questioning. The statement of witness R was corroborated by other evidence and so despite his absence at trial, use of the evidence was fair.

The third complaint was against the witness statement of *witness N* who stated in both the Regional and Appeals Court that his statement was untrue. The Court's task is not to give a ruling as to whether statements of witnesses were properly admitted as evidence; this is for domestic courts. The Court cannot 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, even when the two are in conflict. No violation regarding witness N.

Finally the applicant submitted that the Court of Appeal should not have refused to hear an expert defence witness while agreeing to hear evidence of a prosecution witness. The refusal by the Court of Appeal to hear expert witness K did not adversely affect the proceedings because another expert witness similar to K was heard. Additionally, the decision whether to allow evidence and what evidence is reliable is a matter for the domestic courts.

Mansur v. Turkey, 16026/90
The Convention guarantees to everyone against whom criminal proceedings are brought the right to a final decision within a reasonable time on the charge against him (see Adiletta and Others v. Italy judgment 19 February 1991, Series A no. 197-E, p. 65, para. 17). It is for the Contracting States to organise their legal systems in such a way that their courts can meet this requirement (see Vocaturo v. Italy judgment 24 May 1991, Series A no. 206-C, p. 32, para. 17). The Court rejects the argument by Turkey that they claim to be obligated in their endeavour to eliminate drug trafficking, to detain the applicant while they investigate all matters which might have a bearing on the judgment.

Violation of Article 6 para. 1

Teixeira de Castro v. Portugal, 25829/94
The Court ascertains whether the proceedings as a whole, including the way in which evidence was take, were fair (see Van Mechelen and Others v. the Netherlands, judgment 23 April 1997, Reports of Judgments and Decisions 1997-III, p. 711 article 50).

The use of undercover agents must be restricted and safeguards put in place. The right to a fair administration of justice holds such a prominent place that it cannot be sacrificed for the sake of expedience (see Delcourt v. Belgium, judgment 17 January 1970, Series A, no. 11 p. 15 article 25). The public interest cannot justify the use of evidence obtained as a result of police incitement.

This is a distinguishable from the case of Ludi v. Switzerland, because here the police officers acted on their own volition. In the case of Ludi, the German police had opened a preliminary investigation, where an investigating judge had been aware of his mission, whereby the police officer was confined to acting as an undercover agent.

In the current case it is necessary to determine whether the two police officers' activity went beyond that of undercover agents. The officers' intervention did not take place as part of an anti-drug trafficking operation ordered and supervised by a judge. Neither did the authorities have a good reason to suspect that Mr de Castro was a drug trafficker; on the contrary he has no criminal record and no preliminary investigation concerning him had been opened. He was not known to the police officers before they came into contact with him through the intermediary of V.S. and F.O. The drugs that he supplied was not at his home but were obtained from a third party who obtained them from another person. There is no indication by the Supreme Court's judgment that the applicant possessed more drugs than the police officers incited him to supply. The interference is that the police officers did not confine themselves to investigating the applicant in a passive manner, but exercised an influence such as to incite the commission of the offence. Lastly, the domestic courts said that the applicant had been convicted mainly on the basis of the statements of the two police officers.

In the light of all these considerations, the Court concludes that the actions of the police went beyond those of undercover agents because they instigated the offence and there is nothing to suggest that without their intervention it would have been committed. The intervention meant that the applicant was deprived of a fair trial. Violation of Article 6.1.

Twalib v. Greece, 24294/94

The applicant was given a drugs conviction and ordered to pay a fine and some time in prison. On appeal, the applicant had no money and required free legal aid. Under Greek law there is no provision to grant legal aid for appeals based on points of law.

The Court ruled a violation of Article 6 paragraph 1 taken together with paragraph 3.

Van Geyseghem v. Belgium, 26103/95
The case concerns the conviction of a person in connection with international drug trafficking. She wasn't present at her initial hearing and was sentenced to 4 years' imprisonment which was reduced to 3 years. On appeal she requested that her legal counsel represent her in her absent which was refused.

The Court notes that the issues in the present case was that the Brussels Court of Appeal had decided the case without allowing her counsel to defended her and, in particular, make submissions on her behalf to the effect that the prosecution was time-barred. The Court also notes that 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. The situation is therefore comparable to Poitrimol v France (judgment 13 September 1993, p. 15 paragraph 35) and Lala and Pelladoah v. the Netherlands (22 September 1994, Series A no. 297-A and B, p. 13 paragraph 31 and p. 34 paragraph 38).

This case differs slightly insofar as under Belgian law a person convicted in absentia could apply to have a conviction set aside but in Lala and Pelladoah, the absence of such remedy was not decisive in their decision. The Court notes that in Poitrimol, the legislature had to be able to discourage unjustified absences but in Lala and Pelladoah, it was "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 may be filed against a default judgment given on appeal." The absence of a defendant does not justify depriving him of his right under Article 6.3 to be defended by counsel. It was for the courts to ensure that a trial was fair.

The possibility of applying to set aside a conviction in absentia was not decisive in the Lal and Pelladoah judgments. The interest in being adequately defended prevailed. The right of everyone charged with a criminal offence to be effectively defended by a lawyer is one of the basic features of a fair trial. An accused does not lose this right on account of not attending a court hearing. Even if the legislature must discourage unjustified absences, it cannot penalise them by creating exceptions to the right to legal assistance. There are other means to satisfy

the requirement for defendants to attend court hearings, and Belgian law provides that the Criminal Court may order an accused to attend.

Violation of Article 6.1 taken together with Article 6.3.

Selmouni v. France, 25803/94
The applicant complained that his complaints against police officers were not conducted within a reasonable time. The Court notes considers that the period to be taken into consideration should be 2 December 1992.

The reasonableness of the length of the proceedings should 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 (see Vernillo judgment pp. 12-13; and Acquaviva v. France judgment 21 November 1995, Series A no. 33-A, pp. 15-16 paragraph 53). The Court decides that neither the complexity of the case nor the applicant's conduct justifies the length of the proceedings.

The Court notes that the proceedings have already lasted more than six years and seven months. Where an individual has an arguable claim that there has been a violation of Article 3, the notion of an effective remedy entails, on the part of the State, a thorough and effective investigation capable of leading to the identification and punishment of those responsible (Aksoy v. Turkey judgment 18 December 1996, Reports 1996-IV, p. 2287 paragraph 98; Assenov and Others v. Bulgaria, 28 October 1998, Reports 1998-VIII, p. 3290 paragraph 102; mutatis mutandis, Soering v. the UK, 7 July 1989, Series A no. 161, pp. 34-35 paragraph 88).

The Court considers that 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. The remedy available to the applicant was not an ordinary remedy sufficient to afford him redress in respect of the violations he alleged.

Jasper v. UK, 27052/95
The applicant, convicted of fraudulently evading the prohibition on the importation of cannabis, alleged that the proceedings before the Crown Court and the Court of Appeal, taken together, violated his rights under Article 6.1 and 3 (b) and (d).

He submitted that any failure to disclose relevant evidenced undermined the right to a fair trial and that any restriction on his rights of the defence should be strictly proportionate and counterbalanced by procedural safeguards adequate to compensate for the handicap imposed on the defence. He contended that the ex parte hearing before the judge violated Article 6

because it afforded no safeguards against judicial bias or error and no opportunity to put arguments on his behalf.
The Court recalls that the guarantees in 6.3 are specific aspects of the right to a fair trial set out in paragraph 1 (see Edwards v. UK judgment of 16 December 1992, Series A no. 247-B, article 33). The Court will examine the applicant's allegations together rather than separately as they amount to the same complaint. It will therefore confine its examination to the question whether the proceedings in their entirety were fair.

The right to an adversarial trial means, in a criminal case, that both prosecution and defence must be given the opportunity to have knowledge of an comment on the observations filed and the evidence adduced by the other party (see Brandstetter v. Austria judgment 28 August 1991, Series A no. 211 paragraphs 66 and 67). In addition, Article 3.1 requires that the prosecution authorities should disclose to the defence all material evidence in their possession for or against the accused (see Edwards case, paragraph 34).

In any criminal proceedings, however, there may 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 must be weighed against the rights of the accused (see Doorson v. the Netherlands judgments 26 March 1996, Reports of Judgments and Decisions 1996-II, paragraph 70). In some cases it may 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 are strictly necessary are permissible under Article 6.1 (see Van Mechelen and Others v. the Netherlands judgments of 23 April 1997, Reports 1997-III paragraph 58). Any difficulties caused to the defence by a limitation on its rights must be sufficiently counterbalanced by the procedures followed by the judicial authorities (see Doorson judgment paragraph 72 and Van Mechelen paragraph 54).

Generally it is for national courts to assess the evidence before them (see Edwards judgment paragraph 34). The Court must instead 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 prosecution made an *ex parte* application to the trial judge to withhold a telephone conversation detailing instructions for the applicant to collect a consignment of meat, which he claims he had not known contained cannabis. The trial judge examined the material and ruled that it should not be disclosed without informing any reasons to the defence and without telling the defence which evidence was applied for non-disclosure. The Court notes that the material formed no part of the prosecution case whatever and was never put to the jury.

The need for disclosure was at all times under assessment by the judge provided a further safeguard in that it was his duty to monitor the fairness of the trial and evidence being withheld. Therefore the judge had applied the principles of weighing the public interest in concealment against the interest of the accused in disclosure, giving weight to the interests of justice and that the judge continued to assess the need for disclosure throughout the progress of the trial. These conditions, established by the English Court of appeal jurisprudence, are essential for ensuring a fair trial in instances of non-disclosure of prosecution material. The domestic trial court thus applied standards which were in conformity with the relevant principles of a fair trial embodied in Article 6.1.

The Court finds 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. No violation of 6.1.

It is of concern that the judge was not informed by the opinions of both parties to non-disclosure of evidence and therefore both parties were not involved in *the ex parte* proceedings. Special counsel should have been introduced for ex parte applications.

Condron v. UK, 35718/97
Concerns an applicant who was addicted to heroin and following arrest in suspicion of drug dealing was suffering from heroin withdrawal, in which the doctor declared him to be medically fit to interview. At the interview the applicant answered no comment in response to a question about the dealing of heroin.

The applicants contended that the absence of basic safeguards in the decision of the trial judge to leave the jury with the option of drawing an adverse inference from their silence during police interview, coupled with the failure to take into account the particular circumstances of their case, resulted in the denial of the right to a fair trial in breach of Article 6.1.

Whether the drawing of adverse inferences from an accused's silence infringes Article 6 is a matter to be determined in the light of all the cricumstances of the case, having 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 ingerent in the situation (John Murray v. UK, judgment 8 February 1996, Reports of Judgments and Decisions 1996-I, pp. 49-50 paragraph 47).

The right to silence lays at the heart of the notion of a fair procedure under Article 6 and 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. Nonetheless, the Court stated that the right cannot and should not prevent that the accused's silence, in situations which clearly call for an explanation from him, e taken into account in assessing the persuasiveness of the evidence adduced by the prosecution (ibid.).

Unlike John Murray, the applicants gave evidence at their trial and their case was conducted before a jury who were instructed by the judge to take into consideration silence during the police interview. The applicants offered an explanation at their trial for their silence, unlike John Murray.

The applicants state that they held their silence on the advice of their solicitor which the Court must be given appropriate weight. The solicitor testified before the domestic court that his advice was motivated by his concern about their capacity to follow questions put to them. The Court must examine also whether the trial judge gave sufficient weight to the applicant's reliance on legal advice to explain their silence.

In the Court's opinion, as a matter of fairness, the jury should have been directed that it could only draw an adverse inference if satisfied that the applicants' silence at the police interview could only sensibly be attributed to their having no answer or none that would stand up to cross-examination.

Unlike the Court of Appeal, the Court considers that a direction to that effect was more than merely "desirable".

The Court rejects the Government's submission that the appeal proceedings secured the fairness of the trial because 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 the circumstances the jury was not properly directed and the imperfection in the direction could not be remedied on appeal. Violation of Article 6.1.

No separate issue for 6.2 in the infringement of their right not to incriminate themselves. The applicants submit that there is an overwhelming need to exercise caution in drawing advere inferences when the explanation for a defendant's silence in the face of police questioning if that he was following legal advice, and thus there was a violation of 6.3. The Court recalls that these are specific aspects of the right to a fair hearing set out in paragraph 1 and therefore it concludes that it is unnecessary to examine them.

Khan v. UK, 35394/97, 12/05/2000
The applicant alleges a breach of Article 6.1, on the ground that the use as the sole evidence in his case of the material which had been obtained in breach of Article 8 was not compatible with the "fair hearing" requirements of Article 6.

While Article 6 guarantees the right to a fair hearing, it does not law down any rules on the admissibility of evidence as such, which is primarily a matter for regulation under national law (see Schenk v. Switzerland judgment 12 July 1988, Series A no. 140, p. 29 paragraph 45-46; Teixeira de Castro v. Portugal judgment 9 June 1998, Reports 1998-IV, p. 1462 paragraph 34). It is not for the Court to determine whether particular types of evidence may be admissible. The question is whether the proceedings as a whole, including the way in which the evidence was obtained were fair. This involves an examination of the "unlawfulness" in question and, where violation of another Convention right is concerned, the nature of the violation found.

The "unlawfulness" relates exclusively to the fact that there was no statutory authority for the interference with the applicant's right to respect for private life and that such interference was not "in accordance with the law", as that phrase has been interpreted in Article 8.2.

The domestic courts were of the view that the admission of the evidence was within the law. For this reason the Court finds no violation.

Tierce and Others v. San Marino, 24954/94
Second and third applicants were convicted of possessing drugs with intent to supply, even though the judge at first instance had ruled out the element of intent. Ms Gabrielli was convicted on the ground she had been aware of the second applicant's criminal activities and had knowingly and willingly taken part in them, although the subjective element had been ruled out at first instance and she had, consequently, been acquitted.

Accordingly the appellate judge's review of the guilty verdict challenged by Mr Marra and Ms Gabrielli should have entailed a hearing what they had to say directly.

The Court finds that there were no special features such as to justify denying the applicants a public hearing on appeal which they could attend and at which they could give evidence in person. Therefore there has been a violation of Article 6.1.

Wilkinson and Allen v. UK, 31145/96
Both applicants were serving in the army and were tried by district courts-martial pursuant to the Army Act 1995.

The Court recalls that in the Findlay judgment (see article 69) it held that a general court-martial convened pursuant to the Army Act 1995 did not meet the requirements of independence and impartiality set down in Article 6.1 in view of the central part played in its organisation by the convening officer. The Court expressed concern that the members of the court-martial were subordinate to the convening officer and it found significant that the convening officer also acted as confirming officer.

The Court found a district court-martial convened pursuant to the Air Force Act 1955 to have similar deficiencies (Coyne v. UK judgment of 24 September 1997, Reports 1997-V, pp. 1848-52, article 20-44).

On the same basis the Court found violations of Article 6.1 from a series of cases (Cable and Others v. UK, No 24436/94, 18.2.1999).

In the current case the Court recalls that district army courts-martial were convened pursuant to the Army Act 1955 to try the applicants and so it finds no reason to distinguish the present cases from the other cases. The Court considers that the courts-martial did not meet the independence and impartiality requirements of Article 6.1. In addition since the applicants were faced with charges of a serious and criminal nature and were entitled to a first instance tribunal complying with the requirements of Article 6.1, such organisational defects in their courts-martial could not be corrected by any subsequent review procedure.

The cases were not independent and impartial within the meaning of Article 6.1 and they could not guarantee either of the applicants a fair trial (Smith and Ford v. UK, no. 37475/97, 29.9.1999 srticle 25; Moor and Gordon v. UK, no. 39036/97, 29.9.1999 article 24).

Luca v. Italy, 33354/96
The applicant, convicted of possession of 500g of cocaine, complained that the criminal proceedings against him had been unfair and alleged that he had been convicted on the basis of statements made to the public prosecutor, N., without been given an opportunity to examine the maker of the statements or to have him examined.

Article 6 paragraphs 1 and 3 (d) require that the defendant be given an adequate and proper opportunity to challenge and question a witness against him, either when he makes his statement or at a later stage (see Ludi v. Switzerland judgment of 15 June 1992, Series A no. 238, p.21 article 49; Van Mechelen and Others, judgment of 23 April 1997, Reports 1997-III, p. 711 article 51).

The Court as stated on a number of occasions that it may prove necessary in certain circumstances to refer to depositions made during the investigative stage (in particular, where a witness refuses to repeat his deposition in public owing to fears for his safety, as is typical for mafia organisations) (see Isgro v. Italy, judgment 19 February 1991, Series A no. 194-A, p. 12, article 34; Ludi p.21 article 47). If the defendant has been given an adequate and proper opportunity to challenge the depositions, either when made or at a later stage, their admission in evidence will not contravene Article 6 paragraph 1 and 3 (d). It is incompatible however for a conviction to be based solely or decisively on depositions that have been made by a person who has no opportunity to examine them or have them examined (see Unterpertinger v. Austria judgment 24 November 1986, Series A no. 110, pp. 14-15 articles 31-33; Saidi v. France, judgment 20 September 1993, Series A no. 261-C, pp. 56-57 articles 43-44; Van Mechelon and Others, p. 712 article 55; Dorigo v. Italy, 33286/96, Report 9 September 1998 article 43, unpublished).

In this case the depositions were made by a co-accused. In that connection the Court reiterates that the term "witness" has an "autonomous" meaning in the Convention system (see Vidal v. Belgium judgment 22 April 1992, Series A no. 235-B, pp. 32-33 article 33). Therefore whether it was made by a witness or a co-accused, it constitutes evidence for the prosecution to which the guarantees provided by Article 6.1 and 3 (d) apply (Ferrantelli and Santangelo v. Italy judgment 7 August 1996, Reports 1996-III, pp. 950-51 articles 51-52).

The Court notes that the domestic courts convicted the applicant solely on the basis of statements made by N. before the trial and that neither the applicant nor his lawyer was given an opportunity at any stage to question him. Violation Article 6 paragraph 1 and 3 (d).

Peers v. Greece, 28524/95
The applicant complained that despite being a remand prisoner he was subjected to the same regime as convicts which affected his assumption of innocence. The Court rules there is no Article providing for separate treatment.

Tommaso Palumbo v. Italy, 45264/99
The applicant was charged with the sale of drugs on the 1st of April 1992 and released by a judge order. On 17th November 1992 the investigating judge committed the applicant before the District Court. The case became final on the 27th March 1998.

The applicant complains about the length of the criminal proceedings against him.

According to the Court's case-law, 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 authorities dealing with the case (see Pelissier and Sassi v. France, no. 25444/94, article 67, ECHR 1999-II; Philis v. Greece (no. 2) judgment 27 June 1997, Reports of judgments and decisions 1997-IV, p. 1083 article 35).

The Court notes that the case was not complex. It observes that two hearings were delayed due to strikes by lawyers. In this respect, a delay in criminal proceedings caused by a lawyers' strike cannot be attributed to the State, whereas the period of time elapsed between the end of the strike and the new hearing is to be imputed to the conduct of the authorities (see Portington v. Greexe judgment 23 September 1998, Reports 1998-VI, p. 2633 article 33). The Court is aware of the complicants caused by strikes (see Papageorgiou v. Greeece judgment 22 October 1997, Reports 1997-VI, p. 2291 article 48), and notes the first one was announced to be of indefinite duration. However it considers that a delay of eleven months in scheduling the subsequent hearings is excessive and must be imputed at least in part to the State authorities.

The next delay from 21 March 1996 until 28 November 1996 was caused by political elections. Moreover there had been further delays from 2 June 1994 until 27 April 1995 and 28 November 1996 to 2 June 1997. These delays which amounted to more than 2 years and one month cannot be excused by the volume of work by the court. Violation of 6.1.

Atlan v. UK, 36533/97
Applicant complained against right to a fair trial under Article 6.1 for the prosecutor's failure to disclose evidence to the judge and applicants, and their failure to proclaim the evidence that they had maintained throughout the process of the trial.
The court recalls that while Article 6.1 requires the prosecution should disclose to the defence all material evidence in their possession, it may in some cases be necessary to withhold certain evidence so as to preserve the fundamental rights of another individual or to safeguard important public interest (Rowe and Davis judgment 16 February 2000). However this must be strictly necessary. Limitation on rights must be sufficiently counterbalanced by the procedures followed by the judicial authorities (ibid Article 60-61).

The evidence from a witness which the prosecutor relied on was not served on the defence or put before the judge and under cross-examination. The prosecutor denied that there was any further evidence and then later claimed that unused material did in fact exist which at the *ex parte* hearing the Court of Appeal decided was not necessary to disclose to the applicants. It is not contested that this was not consistent with Article 6.1.

The issue before the Court is whether the ex parte procedure before the Court of Appeal was sufficient to remedy the unfairness. The prosecution did not disclose the evidence to the trial judge. The Court considers that the trial judge is best placed to decide whether or not the non-disclosure of public interest immunity evidence would be unfairly prejudicial to the defence. Moreover had the trial judge seen the evidence he might have chosen a very different form of words for his summing up to the jury.
Violation of Article 6.1

Solakov v. The Former Yugoslav Republic of Macedonia, 47023/99
Convicted with international drug trafficking.

The applicant complained violation of Articles 6.1 and 3 (d) on the basis that his trial was unfair in that he had been unable to cross-examine the witness statements whose statements serves as the only basis for his conviction and that he had been unable to obtain the attendance and examination of two witnesses for the defence.

The Court recalls that Article 6.3 leaves national courts assess whether it is appropriate to call witnesses, in the "autonomous" sense given to that word in the Convention system; it "does not require the attendance and examination of every witness on the accused's behalf: its essential aim, as is indicated by the words "under the same conditions", is a full "equality of arms" in the matter". The concept of "equality of arms" does not, however exhaust the content of Article 6 paragraphs 1 and 3 (d) of which this phrase represents on application among many others (see Vidal v. Belgium, judgment 22 April 1992, Series A no. 235-B, p. 32 article 33; Bricmont v. Belgium, judgment 7 July 1989, Series A no. 158, p. 31 article 89).

All evidence must normally be produced at a public hearing, in the presence of the accused, with a view to adversarial argument. This does 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 pre-trial stage is not in itself inconsistent with Article 6.1 and 3 (d), so long as the defence is given adequate and proper opportunity to challenge and question a witness, either when he makes his statements or at a later stage (Saidi v. France, judgment 20 September 1993, Series A no. 261-C, p 56 article 43; Kostovski v. the Netherlands, judgment 20 November 1989, Series A no. 166, p. 20 article 41; Unterpertinger v. Austria, judgment 24 November 1986, Series A no. 110, p. 14 article 31). The rights are violated when a conviction is based solely on a witness whom the accused has had no opportunity to examine or to have examined either during the investigation or at trial (see Van Mechelen and Others, p. 712 article 55).

The Court observes that there was no attempts made by the defence lawyers to attend the cross-examination of the witnesses in the U.S and that the claim that the second lawyer was not duly summoned is not supported by the documents because the lawyer signed the summons, albeit in the wrong place.
The applicant never complained at trial that he was unable to cross-examine the witnesses nor did he ask for the witnesses to be summoned.

This differs to A.M. v. Italy where the witnesses were questioned by a police officer before trial and the applicant's lawyer was not allowed to attend their examination.
No violation

Goktan v. France, 3340/96
The applicant complained about procedural unfairness, arguing that the courts' lack of discretion as to the length of the imprisonment in default, the defendant's inability to contest the term and the failure to state reasons for the sentence in the judgment constituted a violation of Article 6.1.

The Court notes that the applicant has alleged that the rules governing a fair trial were infringed in that the sentence was automatic, the rights of the defence were violation and no reasons were given. However it finds that there is practically no evidence to support the complaint that the rights of the defence were violated. The proceedings were done under criminal court.

It is true that the length of the imprisonment in default is set by statute by reference to the amount of the customs fine. However the case law of the Convention contains no authority in which a legislature has been censured for laying down a fixed sentence or the courts required to "adapt" such a sentence to the circumstances of the case, independently of the amount of the customs fine imposed. That is particularly true where the measure concerns both civil reparation and a criminal penalty.
No violation.

Del Federico v. Italy, 35991/97
The applicant was arrested for theft and possession of drugs on 9 December 1985 and the decision came final 2 February 1997.

The applicant complains that the length of the criminal proceedings against him amount to a violation of Article 6.1.

Period to be taken into consideration
11 years, one month and twenty-four days

Reasonableness of the length of the proceedings
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 authoirties dealing with the case (see PElissier and Sassi v. France, no 25444/94, article 67).

The Court notes that the case was complex by reason that 59 accused were involved. The Corut finds there is a period of inactivity imputable to the authorities dealing with the case which the government did not provide any explanation. The Court recalls that Article 6.1 imposes on States the duty to organise their judicial systems in such a way that their courts can meet the requirements of this provision (Portington v. Greece judgment 23 September 1998, Reports 1998-VI, p. 2633 article 33).
This length fails to satisfy the "reasonable time" requirement.
Violation of Article 6.1

Osu v. Italy
The applicant complains that he was unable to challenge the finding of guilt made in his absence.

The Court observes that the applicant left Italy after his acquittal at first instance and failed to inform the authorities of his change of address.

The applicant was informed of his conviction on the date of his arrest when he re-entered Italy. He applied to the Court of Cassation seeking leave to lodge a late appeal which was rejected. The Court reiterates that the right to a court is not absolute. 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 must pursue a legitimate aim and there must be a reasonable proportionality between the means employed and the aim sought to be achieved (see Guerin v. France judgment 29 July 1998, Reports of Judgments and Decisions 1998-V, p. 1867 article 37).

The rules of appeals should not prevent litigants from making use of available remedy (see Perez de Rada Cavanilles v. Spain judgment 28 October 1998, Reports 1998-VIII, p. 3255 article 45).

The Court will examine whether the calculation of the running period of the time-limit made by the Court of Cassation could be regarded as foreseeable from the point of view of a person convicted in absentia and whether the penalty for failing to respect that delay did not infringe the proportionality principle (see Levages Prestations Services v. France judgment 23 October 1996, Reports 1996-V p. 1543 article 42).

The Court observes that Section 1 of Law no. 742 of 7 October 1969 provides that the running of procedural terms is automatically suspended from 1 August to 15 September each year and that, should a term start running during this period, the starting date is automatically postponed until the end of such period. The applicant in fact filed his request on 22 September, ie. Within the ten-days time-limit starting from 16 September. There is no explanation why this was not applied to the applicant's case.

By introducing his request for leave to lodge a late appeal seven days after the end of the suspension period the applicant cannot be considered to have acted negligently.
Violation Article 6.1

Edwards and Lewis v. UK, 39647/98
The applicants complained they had been deprived of fair trials contrary to Article 6.1 and they had been victims of entrapment.

The Court reiterates that the requirements of a fair criminal trial under Article 6 entails that the public interest in the fight against crime cannot justify the use of evidence obtained as a result of police incitement (see Teixeira de Castro, pp. 1462-63 paragraph 34-36).

The disclosure of evidence is not an absolute right. It may be necessary to withhold evidence from the defence so as to preserve the fundamental rights of another individual or to safeguard an important public interest. Any difficulties caused to the defence by a limitation on its rights must be sufficiently counterbalanced by the procedures followed by the judicial authorities.

In cases where evidence has been withheld from the defence on public interest grounds, the Court must decide whether the decision-making procedure complied with the requirements to provide adversarial proceedings and the equality of arms and incorporated adequate safeguards to protect the interests of the accused.

The present case departs from Jasper, as it appears that the undisclosed evidence related to an issue of fact decided by the trial judge. The nature of the undisclosed material has not been revealed but it is possible that it was also damaging to the applicant's submissions on

entrapment. Under English law, where public interest immunity evidence is not likely to be of assistance to the accused, but would in fact assist the prosecution, the trial judge is likely to find the balance to weigh in favour of non-disclosure.

The Court foes not consider that the procedure employed to determine the issues of disclosure of evidence and entrapment complied with the requirements to provide adversarial proceedings and equality of arms or incorporated adequate safeguards to protect the interests of the accused. There has been a violation of Article 6.1.

Mitev v. Bulgaria, 40063/89

The applicant complained that the criminal proceedings against him were excessively lengthy and breached Article 6.1.

Alleged excessive length of the petty thefts case
The global period to be examined is six years and seven and a half months. The Court finds that the length of the criminal proceedings against the applicant on at least some of the charges that eventually formed the petty thefts case against him failed to satisfy the reasonable time requirement of Article 6.1 and there has been a violation.

Alleged excessive length of the icons and antiquities case
The global period to be examined is at least nine years and five months.

At the investigation stage, the authorities were responsible for excessive delays. A period of one year was spent in correcting omissions in the investigation. The applicant was responsible for a delay of one year as he did not indicate his address to the relevant authorities.

The Court finds that the length of the proceedings on at least some of the charges that eventually formed the icons and antiquities case against him failed to satisfy the reasonable time requirement of Article 6.1 and there has been a violation.

Crowther v. UK, 53741/00
The applicant was convicted for importing drugs and sentenced in 1991 to six years' imprisonment and a confiscation order in the sum of £22,000 with a term of 18 months. Customs wrote to the Court that the sum ordered had not been paid and that they were considering applying for a distress warrant to be issued in respect of the applicant's rolex watch. The confiscation order had been enforced. The applicant did not pay the order and was committed to prison for 15 months in 1998.

The applicant complained that the confiscation procedure took an unreasonably long time contrary to Article 6.1.

The reasonableness of the length of proceedings must 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 particularly the complexity of the case, the conduct of the applicant and of the relevant authorities and the importance of what was at stake for the applicant in the litigation (see Price and Lowe v. UK).

The fact that throughout this period the applicant was under a duty to pay the sum owing under the confiscation order did not absolve the authorities from ensuring that the proceedings were completed within a reasonable time. Violation of Article 6.1

Calleja v. Malta, 75274/01
The applicant was detained on remand for the trafficking of drugs and separate threat against the life of the assistant of the Prime Minister for his role in his conviction.

The complexity of the case
The case is complex. The length of inquiry cannot be regarded as excessive.
The applicant's conduct
The Court is of the opinion that the applicant's behaviour contributed to a certain extent to slowing down the proceedings. However the Court recalls that Article 6 does not require accused persons actively to co-operate with the judicial authorities. Nonetheless such conduct constitutes an objective fact, not capable of being attributed to the respondent State, which is to be taken into account when determining whether or not the proceedings exceeded a "reasonable time" (see Ledonne v. Italy, no. 35742/97, paragraph 25; I.A. v. France, judgment paragraph 121; Eckle judgment p. 36 paragraph 82). In the present case this cannot justify the length of the periods in between individual hearings and certainly not the total duration of the proceedings (mutatis mutandi Portington v. Greece, judgment 23 September 1998,p .2632 paragraph 29; Zana v. Turkey, p. 2552 paragraph 79).
The conduct of the competent authorities
The Court notes that there were two periods of inactivity imputable to the State's authorities totalling more than a year. Even if these delays by the authorities are not excessive, seven years and eight months determining the charge is a priori unreasonable. Violation of Article 6.1

Kurti v. Greece
Article 6.1

The applicant was detained in relation to a drug bust which police suspected he was associated with, which was later dropped in Court. The Court refused to give him compensation due to his own “gross negligence”.

The applicant complained that he was unlawfully detained for 15 months without compensation. The lack of precision in the concept of gross negligence, which involved an assessment of questions of fact, required the courts give more detailed reasons, particularly as their finding was decisive for the applicant’s right to compensation (Georgiadis v. Greece, judgment 29 May 1997, p. 949 paragraph 43). Violation.

Romanov v. Russia, 63993/00
Article 6.1
The applicant complained that he had never appeared before the domestic court.

The notion of a fair trial supposes that a person charged with a criminal offence is entitled to be present and participate effectively in the first-instance hearing (see Colozza v. Italy, p. 14-15 paragraph 27 and 29). This was not satisfied and neither was he present on appeal. The Court assesses if this was justified.

The requests by the applicant to appear in court were rejected because the detention facility did not allegedly transport ill detainees to court and because the testimony of a mentally disturbed person could not be accepted as evidence.

The Court recalls that the State is under an obligation to secure the attendance of an accused who is in custody (see Goddi v. Italy, p. 11 paragraph 29). The Court reiterates that the trial court may exceptionally continue hearings where the accused is absent on account of illness, provided that his or her interests are sufficiently protected (see Ninn-Hansen v. Denmark no 28972/95, p. 351). However where proceedings involve an assessment of personality and character of the accused and his state of mind at the time of the offence and where the outcome could be of major detriment to hi, it is essential to the fairness of the proceedings that he be present at the hearing and afforded the opportunity to aprtiocuapate in it together with his counsel (see Kremzow v. Austria, p. 45 paragraph 67; Pobornikoff v. Austria no. 28501/95 paragraph 31; Zana v. Turkey, p. 2551 paragraph 71-73).

In the present case the authorities failed to take any steps to secure the applicant’s attendance at the hearings. There is no indication that the applicant displayed any disturbed behaviour or that his physical and mental condition otherwise precluded him from appearing before the court.

In view of what was a stake for the applicant the domestic court could not, if the trial was to be fair, determine his case without a direct assessment of the applicant's evidence and the presence of the applicant's lawyer could not compensate for his absence.
Breach of Article 6.1 and 6.3

Khudoyorov v. Russia, 6847/02
The Court, of its own motion, raised the question whether the length of the criminal proceedings against the applicant was compatible with the "reasonable-time" requirement of Article 6.1.

The complexity of the case does not suffice to account for the length of the proceedings.

The Court finds that the main cause of the delays was the conduct of the authorities who failed to act with the necessary diligence in conducting the applicant's proceedings.
Violation of Article 6.1.

Vanyan v. Russia, 53203/99
The applicant was searched and found to be in possession of a sachet of heroin.

The applicant complained that he had been convicted of an offence which had been incited by the police and his conviction was based on evidence from the police officers involved and from OZ, an individual acting on their instructions.

The Court reiterates that its duty is to ensure the observance of the engagements undertaken by the Contracting States to the Convention. In particular, it is not its function to deal with errors of fact or of law allegedly committed by national courts unless and in so far as they may have infringed the rights And freedoms protected by the Convention. While Article 6 guaranteed the right to a fair hearing, it does not lay own any rules on the admissibility of evidence as such, which is therefore primarily a matter for regulation under national law. The question is whether the proceedings as a whole were fair.

The use of undercover agents must be restricted nd safeguards put in place even in cases concerning the fight against drug trafficking. **The requirement of a fair criminal trial under Article 6 entail that the public interest in the fight against drug trafficking cannot justify the use of evidence obtained as a result of police incitement** (see Teixeira de Castro v. Portugal, pp. 1462-1463).

OZ was used by police to take part in the test purchase of drugs in order to expose drug trafficking by the applicant. There is no evidence to suggest that before the intervention the police had reason to suspect that the applicant was a drug dealer. The police relied on a statement which was not scrutinised by the court and which cannot therefore be taken into account. The police had not confined themselves to investigating the applicant's criminal activity in a passive manner. The Court finds that the police incited the offence which violated article 6.1.

The applicant further complained under Article 6.1 and 6.3 that the court decision was taken in his absence and in the absence of his counsel since they had not been informed of the hearing.

The Court reiterates that it flows from the notion of a fair trial that a person charged with a criminal offence should be entitled to be present and participate effectively in the first-instance hearing (see Colozza v. Italy, pp. 14-15 paragraph 27 and 29).

The personal attendance of an appeal hearing does not necessarily take on the same significance. Regard must be had in assessing whether the defence's interests are presented and protected (Belziuk v. Poland, p. 570 paragraph 37).

It is 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 (see Lala v. the Netherlands, p, 13 paragraph 33).

The equality of arms includes the right that criminal proceedings should be adversarial. 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 (see Brandtetter v. Austria, p. 27 paragraph 66-67).

There has been a violation of Article 6.1.

Krasniki v. Czech Republic, 51277/99
The applicant was accused of having committed the offence of the unauthorised production and possession of narcotic and poisonous substances.

The applicant complained that his conviction had been based exclusively on anonymous witness testimony and that the judicial proceedings had not adequately guaranteed the necessary safeguards to ensure a fair trial as his counsel had been denied the opportunity to see the

anonymous witness during their testimonies or to learn their identities and alleges a violation of Article 6.1 and 6.2.

The use of statements made by anonymous witnesses are not always incompatible with the Convention (Doorson v. the Netherlands, p. 470 paragraph 69; Van Mechelen and Others v. the Netherlands p. 711 paragraph 52). However handicaps for the defence should be sufficiently counterbalanced by the procedures followed by the judicial authorities. The applicant should not be prevented from testing the anonymous witness's reliability (see Kostowski v. the Netherlands, p. 20 paragraph 42). No conviction should be based either solely or to a decisive extent on anonymous statements (Van Mechelen and Others, p.712 paragraph 54-55).

When assessing whether the procedures followed in the questioning of an anonymous witness had been sufficient to counterbalance the difficulties caused to the defence, due weight had to be given to the extent to which the anonymous testimony had been decisive in convicting the applicant.

The investigating officer took into account the nature of the environment of drug dealers who frequently use threats or violence against people who testify against them, however it cannot be established from the records taken during the witnesses' interviews or from trial reports how this was assessed. Nor did the Regional court carry out such an examination into the seriousness and substantiation of the reasons for granting anonymity to the witnesses when it approved the judgment of the District court wich had decided to use the statements of the anonymous witnesses in evidence.

The Court is not satisfied that the interest of the witnesses in remaining anonymous could justify limiting the rights of the applicant to such an extent (see Visser v. the Netherland, no. 26668/95 paragraph 48).

The Court observes that the District Court based the applicant's conviction solely or at least to a decisive extent on the anonymous testimonies. Violation of Article 6.1 and 6.3.

Jalloh v. Germany, 54810/00
The applicant considered that his right to a fair trial had been infringed by the use of evidence obtained by the administration of emetics. He claimed violation of his right not to incriminate himself.

The Court has consistently held that the right not to incriminate oneself is primarily concerned with respecting the will of an accused person to remain silent. As commonly understood in the

legal systems of the Contracting Parties to the Convention and elsewhere, it does not extend to the use in criminal proceedings of material which may be obtained from the accused through the use of compulsory powers which has an existence independent of the will of the suspect such as documents acquired to a warrant, breath, blood, urine, hair or voice samples and bodily tissue for the purpose of DNA testing (see Saunders paragraph 69; Choudhary v. UK no. 40084/98; J.B. v. Switzerland; P.G. and J.H. v. UK, paragraph 80).

The evidence secured in this case was not obtained unlawfully in breach of domestic law according to the national courts. The evidence used against the applicant was obtained as a direct result of a violation of Article 3.

The use of evidence obtained in violation of Article 3 raises serious issues as to the fairness of such proceedings. Evidence obtained as a result of acts of violence or brutality or other forms of treatment which can be characterised as torture should never be relied on as proof of the victim's guilt, even if it was not the intention of the authorities to inflict pain and suffering on the applicant. The applicant was denied a fair trial in breach of Article 6.

Next the Court will examine if the evidence obtained and the use made of it undermined his right not to incriminate him.

The Court has on occasion given the principle of self-incrimination a broad meaning so as to encompass cases in which coercion to hand over real evidence to the authorities was in issue. In Funke v. France, paragraph 44, the Court found that an attempt to compel the applicant to disclose documents violated his right not to incriminate himself. In J.B. v. Switzerland (paragraph 63-71) the Court considered the State authorities' attempt to compel the applicant to submit documents which might have provided information about tax evasion to be in breach of the principle against self-incrimination.

In Saunders, the Court considered that the principle against self-incrimination did not cover "material which may be obtained from the accused through the use of compulsory powers but which has an existence independent of the will of the suspect such as documents acquired pursuant to a warrant, breath, blood and urine samples and bodily tissue for the purpose of DNA testing" (paragraph 69).

In the Court's view, drugs hidden in the applicant's body which were obtained by the forcible administration of emetics could be considered to fall into the category of material having an existence independent of the will of the suspect, the use of which is generally not prohibited in criminal proceedings. It differs to Saunders which concerned material obtained by coercion for

forensic examination with a view to detecting the presence of alcohol or drugs. This related to a minor interference. In Funke and JB v. Switzerland, the administration of emetics was used to retrieve real evidence in defiance of the applicant's will.

The evidence was obtained by means of a procedure which violated Article 3, which is in striking contrast to procedures for obtaining a breath test or a blood sample which although constitute an interference of private life, are justified under Article 8.2 as being necessary for the prevention of criminal offences. Therefore the principle against self-incrimination is applicable to the present proceedings.

In order to determine whether the applicant's right not to incriminate himself has been violated the Court will have regard to the following factors: the nature and degree of compulsion used to obtain the evidence; the weight of the public interest in the investigation and punishment of the offence in issue; the existence of any relevant safeguards in the procedure; and the use to which any material so obtained is put.

The Court reiterates that the forcing of the applicant to regurgitate the drugs interfered with his physical and mental integrity.

The public interest could not justify recourse to such a grave interference because of the small scale of drug dealing.

There did not exist relevant safeguards in the procedure because the applicant was not subjected to a full examination before the measure was carried out.

The applicant did take the opportunity to oppose the use at his trial of this evidence however any possible discretion on the national courts to exclude this evidence had not come into play, as they considered the impugned treatment to be authorised by national law.
Violation of Article 6.1.

Khudobin v. Russia, 59696/00
The applicant sold 0.05g of heroin to an undercover police. The applicant had no criminal record and the only allegations of his involvement in drug dealing had come from the police informant. Furthermore he made no financial gain from the deal. It appears that the police operation was to target any person who would agree to sell heroin instead of a well-known drug dealer.

The operation had not been subjected to judicial review or any other independent supervision. The police had never been questions by the court, although the defence had sought to have them heard. The applicant had been absent from the hearing of the merits. The domestic court did not analyse relevant factual and legal elements which would have helped it to distinguish the entrapment from a legitimate form of investigative activity. The proceedings had not been fair and violated Article 6.1.

Kaste and Mathisen v. Norway, 1885/04
The applicants were arrested for drug smuggling. The applicants complained that they were not able to question D, the co-accused, who they claim would have been important to their defence and which dispensed him from answering any questions that the applicants wished to address.

The High Court did not consider D as being a witness for the purposes of Article 6.1 and 6.3. In the Court's case law, depositions made by a co-accused rather than by a witness is of no relevance and it constitutes evidence for the prosecution to which the guarantees provided by Article 6.1 and 6.3 (d) apply (see Luca paragraph 41). D's depositions had a decisive influence on the outcome of the case.

The Court is not satisfied that the applicants were given an adequate and proper opportunity to contest the statements on which their conviction was based. Violation of Article 6.1 and 6.3(d).

Young v UK, 60682/00
The applicant breached an earlier probation order and was imprisoned and requested to provide a urine sample for MDT. The applicant suffered from cerebral palsy and could not control her bladder. The applicant risked a punishment of 42 additional days detention and was given 3 additional days detention which she complained violated Article 6.3.

The Court found the additional days' detention amounted to a deprivation of liberty. The Court finds there was no structural independence between those charged with the roles of prosecution and adjudication in the determination of guilt by the Governors from Whitfield and Others v. UK where the adjudications were unfair. In the present case there has been a violation of Article 6.1 as regards to independence and impartiality of the tribunal and in addition a violation of Article 6.3 for the lack of legal representation.

Black v. UK, 56745/00
During a drug control strip search with the applicant in prison, an item fell out of his anus. The applicant immediately re-inserted it into his anus. The officers ordered the applicant to hand

over the object which the applicant refused on medical grounds. The applicant faced a potential punishment of 42 days' additional detention and was given 5 days detention. The applicant complained a breach of Article 6 that the Governor was not independent or impartial and the absence of a public adjudication decision. In light of Ezeh and Connors judgment, prisoners could only be physically searched by a medical officer with the consent of a prisoner.

The Court has regard to the reasoning and conclusion found in Young v. UK in which it found that the same chard of disobeying a lawful order was criminal within the meaning of Article 6.1 having regard to the nature and severity of the penalty of detention liable to be 42 days. Violation of Article 6.1 and 6.3 for the same reasoning as Young.

Stoimenov v. "The Former Yugoslav Republic of Macedonia", 17995/02
The applicant was arrested for drug trafficking and possession of poppy-tar.

The applicant complained that the courts had refused his request for an alternative expert examination concerning the quality of the poppy-tar and that they had based their decisions on the expert reports produced by the same Ministry as had brought the criminal charges against him.

The Court reiterates that the principle of equality of arms is part of the wider concept of a fair hearing within the meaning of Article 6.1 and requires a "fair balance" between the parties: each party must be afforded a reasonable opportunity to present their case under conditions that do not place them at a disadvantage vis a vis their opponent (see Gorraiz Lizarraga and Others v. Spain, 62543/00 paragraph 56).

The Court finds that this principle was not complied with in the instant case as the applicant's repeated requests for an alternative expert examination were refused. It notes that there were certain arguments as to the quality of the poppy-tar. It considers noteworthy that the appeal court made an assumption not based on the expert report that poppy-tar is better for opium use when it is old. As the applicant was unable to challenge the evidence, the Court considers that he was deprived of the opportunity to put forward arguments in his defence on the same terms as the prosecution and the Court found a breach of Article 6.1.

V. Finland. 40412/98
The applicant complained that the police withheld information containing to evidence produced in court, including that they tapped the applicant's telephone and so it transpires that

the police were unwilling to reveal the true course of their actions which may have resulted in the applicant's committing a criminal offence. Therefore the defence were not permitted to make submissions and participate in the decision making process. No public interest grounds have been advanced. Therefore the Court finds that the decision making procedure failed to comply with the requirements of fairness as it was not possible for the defence to argue in due time the case on entrapment in full and it follows there has been a violation of Article 6.1.

Popovici v. Moldova, 289/04
The applicant complained that the proceedings leading to his conviction and sentencing had been unfair and arbitrary.

Although the appellant was not given the opportunity to give evidence in person before the appeal, leave-to-appeal proceedings may comply with Article 6.1. However where the sppellate court is called upon to examine a case as to the facts and the law and to make a full assessment of the question of the applicant's guilt or innocence, it cannot as a matter of fair trial, properly determine those issues without a direct assessment of the evidence given in person by the accused – who claims that he has not committed the act alleged to constitute a criminal offence (see Ekbatani v. Sweden, p. 14 paragraph 32).

The appellate court (here the Supreme Court) convicted the applicant on almost all charges without hearing evidence from him in person and without producing evidence in his presence at a public hearing with a view to adversarial argument. Violation of Article 6.1.

The applicant argued that the declaration that he was the head of a criminal gang before his being convicted, amounted to a breach of his right to be presumed innocent.

Presumption of innocence will be violated if a statement of a public official concerning a person charged with a criminal offence reflects the opinion that he is guilty before he has been proved so according to law. The Court emphasised the importance of the choice of words by public officials in their statements before a person has been tried and found guilty of an offence (see Daktaras v. Lithuania, no. 42095/98 paragraph 41).

It is undisputed that the applicant was known to the public by the name of Micu, and because the criminal organisation bore this as the name of the group leader it constitutes an implicit accusation that the person is involved with the gang. This means that the statement by the authorities was a declaration of the applicant's guilt which encouraged the public to believe him guilty and prejudged the assessment of the facts by the competent judicial authority. Breach of Article 6.2.

Malininas v. Lithuania, 10071/04
The applicant was arrested for drug trafficking. The applicant complained that he had been subjected to entrapment and had been unfairly convicted of drug dealing. He further complained about the non-disclosure at his trial of certain evidence relating to the authorisation and use of the Criminal Conduct Simulation Model.

The court recalls the Ramanauskas judgment which it elaborated the concept of entrapment in breach of Article 6.1. In undercover techniques there must be adequate safeguards against abuse, as the public interest cannot justify the use of evidence obtained as a result of police incitement (Teixeira de Castro v. Portugal paragraph 34-36).

In the present case there was no evidence that the applicant had committed any drug offences beforehand or drug trafficking. The criminal conduct simulation model was not fully disclosed to the applicant. The relevant evidence was thus not put openly before the trial court or tested in an adversarial manner. The elements of the police incitement extended the police' role beyond that of undercover agents to that of "agents provocateurs". They did not merely join an on-going offence; they instigated it. The necessary inference from these circumstances is that the police did not confine themselves to investigation the applicant's criminal activity in an essentially passive manner, but exercised an influence such as to incite the commission of the offence (Teixeira de Castro v. Portugal paragraph 37-39).

The aggregate of these elements undermined the fairness of the applicant's trial.

Vladimir Romanov v. Russia, 41461/02
The applicant complained he had been denied a fair hearing in that he had not been given adequate opportunity to put questions to witnesses against him, namely the victim of the robbery, Mr. I, and the accomplice, Mr. T.

As a rule, rights for the defence to be present during evidence produced in court require that the defendant be given the adequate and proper opportunity to challenge and question a witness (Saifi v. France, p. 56 paragraph 43). In the event that the witness cannot be examined and this is due to them being missing, the authorities must make a reasonable effort to secure their presence (see Artner v. Austria, p. 10 paragraph 21). Article 6 does not grant the accused an unlimited right to secure the appearance of witnesses in court. The conviction must not rest solely or decisively on the depositions of a witness whom the accused has had no opportunity

to examine or to have examined during the investigation or at trial (see Isgro v. Italy, p. 13 paragraph 35).

The Court is not convinced that the applicant's avowal that he had intended to beat the victim up amounted to an admission that he had waned to rob him too, based on the deposition interview which was not recorded on video.

The Court finds that the applicant cannot be regarded as having had a proper and adequate opportunity to challenge Mr. I's statements, which were of decisive importance for his conviction and consequently he did not have a fair trial. There has thus been a violation of Article 6.1.

Dublas v. Poland, 48247/06
The applicant complained that the length of the proceedings had been incompatible with the reasonable time requirement laid down in Article 6.1 which is four years to date.

The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see Frydlender v. France no. 30979/96 paragraph 43). The Court considers that in the instant case the length of the proceedings was excessive and failed to meet the reasonable time requirement and there has been a breach of Article 6.1.

Trofimov v. Russia, 1111/02
The applicant was convicted of drug trafficking. In a pre-trial statement S, who was the partner of Sk who was dealing with the applicant, confirmed that the applicant repeatedly handed drugs over to Sk and she had resold them.

The applicant complained that the courts had made an incorrect assessment of the evidence and had failed to secure the attendance of S and of the expert who had examined the seized substances.

Attendance of S
If there has been no negligence on the part of the authorities, the impossibility of securing the appearance of a witness at the trial does not in itself make it necessary to halt the prosecution (see Artner v. Austria paragraph 21). Rights would be violated if the conviction was based solely

on the depositions of a witness whom the accused had no opportunity to examine or to have examined either during the investigation or at trial (see Delta v. France, p. 16 paragraph 37).

S was serving a prison sentence in another town which was the reason why his attendance was not secured. The Court cannot accept this reasoning and the Government conceded that no effort was made to provide the applicant with an effective opportunity to challenge and question a witness against him.

This failure restricted the rights of the defense to an extent that is incompatible with Article 6.1 and 6.3.

Polyakov v. Russia, 77018/01
The applicant was convicted of drug trafficking and complained that the courts had arbitrarily rejected his requests to examine several witnesses whose testimony would help his defence.

Article 6.3 does not require the attendance and examination of every witness (Vidal v. Belgium, pp. 32-33, paragraph 33). An applicant claiming a violation of his right to obtain the attendance and examination of a defence witness should show that the examination of that person was necessary for the establishment of the truth and that the refusal to call that witness was prejudicial to the defence rights (Guilloury v. France, no. 62236/00, paragraph 55).

The Court notes that the court rejected the applicant's request to produce evidence without any reason. The request was relevant to the subject matter of the accusation. The only direct evidence showing that the applicant had sold drugs was the putative purchaser's deposition made during the pre-trial investigation, which she retracted at trial. Thus the Court considers that the conviction was based primarily on the assumption of his being in a particular place at a particular time, the right to obtain the attendance and examination of witnesses on his behalf and the principle of equality of arms, imply that he should have afforded a reasonable opportunity to challenge the assumption effectively (see Popov v. Russia, no. 26853/04, paragraph 183).

Natunen v. Finland, 21022/04
The applicant was convicted of drug charges and complained under Article 6.1 and 6.3 that the proceedings had been unfair due to the destruction of a major part of the recordings by the policy.

It is a fundamental aspect of a right to a fair trial that criminal proceedings should be adversarial and there should be equality of arms between the prosecution and defence. In

addition Article 6.1 requires that the prosecution authorities disclose to the defence all material evidence in their possession for or against the accused (see Rowe and Davis). However this is not an absolute right.

Article 6.3 guarantees the accused "adequate time and facilities for the preparation of his defence" and therefore implies that the defence activity on his behalf may comprise everything which is "necessary" to prepare the trial. The accused must have the opportunity to organise his defence without restriction as to the possibility to put all relevant defence arguments before the trial court and thus to influence the outcome of the proceedings (see Can v. Austria, no. 9300/81 article 53 and Moiseyev v. Russia, no. 62936/00 paragraph 220). The facilities which should be enjoyed by everyone charged with a criminal offence include the opportunity to acquaint himself, for the purposes of preparing his defence, with the results of investigations carried out throughout the proceedings (see CGP v. the Netherlands, no. 29835/96 and Galstyan v. Armenia, no. 26986/03 paragraph 84).

Failure to disclose to the defence material evidence which could enable the accused to exonerate him would constitute a refusal of facilities necessary for the preparation of the defence and violate Article 6.3.

A procedure whereby the investigating authority attempts to assess what may or may not be relevant to the case, cannot comply with the requirements of Article 6.1. The decision was made in the course of the pre-trial investigation without providing the defence with the opportunity to participate in the decision-making process.

The contested measure stemmed from a defence in the legislation in that it failed to offer adequate protection to the defence, rather than any misconduct of the authorities, who were obliged by law to destroy the recordings. The Coercive Measures Act was problematic that information could be destroyed before the resolution of the case. Violation of Article 6.1 and 6.3.

Shteyn v. Russia, no. 23691/06
The applicant complained that the length of the criminal proceedings had exceeded the "reasonable time" requirement of Article 6.1.

The reasonableness of the length of proceedings must be assessed in the light of the complexity of the case and the conduct of the applicant and the relevant authorities (see Pelissier and Sassi v. France, no. 25444/94, paragraph 67). Article 6 is designed to avoid that a person charged

should remain too long in a state of uncertainty about his fate (see Nakhmanavoich v. Russia, no. 55669/00, paragraph 89; Taylor v. UK, no. 48864/99).

The Court cannot accept that the complexity of the case, taken on its own, is such as to justify the length of the proceedings.

The Court finds that the applicant has not contributed significantly to the length of the proceedings. Yet certain delays were attributable to the domestic authorities, in that few hearings were held in 2007. Violation of Article 6.1.

Constantin and Stoian v. Romania, no. 23782/06
The applicants complained under Article 6 that they had not received a fair trial. They claimed to have been incited to commit a criminal offence by the undercover police agents acting as agents provocatuers, which the first applicant claimed he had been aware of during the operation. Secondly, they argued that in convicting them, the Court of Appeal had not carried out a thorough examination of the evidence.

The Court must ascertain whether the undercover police confined themselves to "investigating criminal activity in an essentially passive manner". The applicant's had no predisposition to drug trafficking. Previous conviction for drug use cannot change this conclusion. There was no evidence to suggest that the applicant's behaviour was unlawful in the decision to start criminal proceedings. No heroin was found on the possession of the first applicant or in the home of the second applicant.

The Court of Appeal gave precedence to the statements obtained by the prosecutor. The Court reiterates that when a court of appeal is called upon to examine the case, it cannot as a matter of fair trial; properly determine the issues without a direct assessment of the evidence given by the applicant where they claim not to have committed the act alleged to constitute the criminal offence (See Danila v. Romania, no. 53897/00, paragraph 35).

If it had not been for the agent's express request to buy drugs, the events would not have occurred. The actions of the undercover police officers had the effect of inciting the applicants to commit the offence of which they were convicted; going beyond the mere passive investigation of existing criminal activity, and the domestic courts did not investigate sufficiently the allegations of incitement. The applicant's trial was deprived of fairness and there was a violation of Article 6.1.

Janatuinen v. Finland, 28552/05

The applicant complained under Article 6.1 and 6.3 that his right to a fair trial had been breached in that recordings of telephone conversations relevant to his defence had been destroyed by police.

Court proceedings should be adversarial and there should be equality of arms between the prosecution and defence. The prosecution must disclose all material evidence, although not absolute. It may 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. Any difficulties caused to the defence by limitation on its rights must be sufficiently counterbalanced by the procedures followed by the judicial authorities.

Failure to disclose material evidence, which contains particulars which could enable the accused to exonerate himself or have his sentence reduced, would constitute a refusal of facilities necessary for the preparation of the defence, and violate Article 6.3. The accused may be expected to give specific reasons for his request and the courts are entitled to examine the validity of these reasons (Bendenoun v. France, paragraph 52).

As the Court of Appeal never had the opportunity to verify the contents of the destroyed recordings, the Court cannot find any justification for finding that the destroyed recordings were irrelevant to the applicant's defence.

Violation of Article 6.1.

Skorobogatykh v. Russua, 4871/03

Each party must be given a reasonable opportunity to have knowledge of an comment on the observations made or evidence adduced by the other party and to present his or her case under conditions that do not place him or her at a substantial disadvantage. The applicant's requests for leave to appear at court were denied precisely on the ground that the domestic law did not make provision for convicted person to be brought from correctional institutions to the place where their civil claim was being heard. The Court is not convinced that the representative's appearance before the court could have secured the effective, proper and satisfactory presentation of the applicant's case. The District Court could have held a session in the correctional institution where the applicant was serving his sentence, as the Constitutional Court indicated in its relevant decision. However the courts did not consider such an option.

Violation of Article 6.1

Bulfinsky v. Romania, 28823/04
The applicant complained that he had not received a fair trial under Articles 6.1 and 6.3 for being entrapped by undercover agents, for the courts to refuse to examine evidence without giving thorough explanations and that the decisions had not been pronounced publicly.

The applicant had no previous drug conviction and no drugs were found in his home.

The courts could not have ensured the respect of the principle of fairness and the equality of arms, without hearing evidence from the undercover agents and without allowing the defendants to question these persons. The Court does not hold that evidence given by a witness in open court and on oath should always be relied on in preference to other statements, even when the two are in conflict (Doorson v. the Netherlands, paragraph 78). However the reasoning given by the court to justify the precedence given to D.C's statements, who testified against the applicant, might raise an issue with the rights of the defence.

The courts did not investigate sufficiently the allegations of entrapment. Violation of Article 6.1

Demerdzieva and Others v. "The Former Yugoslav Republic of Macedonia", 19315/06
The applicants complained that the their conviction had been based only on evidence obtained by the agent provocateur and their appeal to the Supreme Court had been erroneously declined based on points of law.

The Court finds that an appeal on points of law was therefore an effective remedy against the courts decision. The application for appeal was not appropriately stamped and so it was submitted in good time and the case should have gone to trial. The Court has already found that rules setting time-limits for lodging appeals must not be applied in a way which prevents litigants from using an available remedy. The problem in the present case is that a procedural rules has been applied in such a way as to prevent the applicants' appeal being examined on the merits, with the attendant risk that their right to the effective protection of the courts would be infringed (see Zvolsky and Zvolska v Czech Republic, no. 46129/99 paragraph 51).

The Supreme Court erroneously rejected the applicants' appeal on points of law depriving them of their right of access to a court (see Fetaovski v. former Yugoslav Republic of Macedonia, no. 10649/03 paragraphs 37-41). Violation of 6.1.

Zhuk v. Ukraine, 45783/05

The applicant was convicted for drug dealing in which drugs were allegedly planted on his possession. The applicant complains that the Supreme Court had examined his appeal on points of law in his absence, in breach of equality of arms under Article 6.1.

The Court has held that proceedings concerning leave to appeal and proceedings solely involving questions of law, as opposed to questions of fact, may comply with the requirements of Article 6, even though the appellant was not given an opportunity of being heard in person by the appeal court or court of cassation, provided that a public hearing was held at first instance and that the higher courts did not have the task of establishing the facts of the case, but only of interpreting the legal rules involved (see Hermi v. Italy, no. 18114/02 paragraph 61).

The prosecutor had the advantage of being present at the preliminary hearing unlike any other party, and to make oral submissions to the judges. The Court considers that procedural fairness required that the applicant should also have been given an opportunity to make oral submissions in reply. The judges dismissed the applicant's appeal on points of law at the preliominary hearing, thus dispensing with a public hearing to which the applicant would have been summoned and been able to take part in. The Supreme Court did not enable the applicant to participate in the proceedings in conformity with the principle of equality of arms and violated Article 6.1.

Kornev and Karpenko v. Ukraine, 17444/04
The conviction of the first applicant in selling drugs was mainly based on statements by witness Shch which had been given at the stage of investigation.

As a general rule, the defendant must be given an adequate and proper opportunity to challenge and question a witness against him, either when he makes his statements or at a later stafe (Ludi v. Switzerland, p. 21 paragraph 49). A conviction should not be based solely or to a decisive extent on statements which the defence has not been able to challenge (Doorson v. the Netherlands, p. 472 paragraph 76).

Where a conviction is based solely or to a decisive degree on statements that have been made by a person whom the accused has had no opportunity to examine or to have examined, the rights of the defence are restricted and there is a violation of Article 6 (see Unterpertinger v. Austria, pp 14-15 paragraph 31-33; Saidi v. France, paragraph 43-44; Luca v. Italy, no. 33354/96, paragraph 40).

The Court is not satisfied that the applicant was given an adequate and proper opportunity to contest the statements on which his conviction was based and there has accordingly been a violation of Article 6.3.

The second applicant complained that she had no time to prepare her defence and had not been represented and had not been given time to arrange for such representation under Article 6.3.

1. *The right to adequate time and facilities to prepare her defence*

"Adequate time and facilities for the preparation of his defence" and is "necessary". The defence must have the opportunity to organise his defence in an appropriate way and without restriction as to the opportunity to put all relevant defence arguments before the trial court and thus to influence the outcome of the proceedings (Can v. Austria, no. 9300/81 paragraph 53; Connolly v. UK, no. 27245/95). The facilities available to everyone charged with a criminal offence should include the opportunity to acquaint himself for the purposes of preparing his defence with the results of investigations carried out throughout the proceedings (see C.G.P. v. the Netherlands, no. 29835/96 and Foucher v. France, paragraph 26-38).

The court concludes that the applicant was not afforded adequate time and facilities for the preparation of her defence and accordingly there has been a violation of Article 6.3 taken together with Article 6.1.

2. *The right to defend herself in person or through legal assistance of her own choosing and the right to examine or have examined witnesses*

Not necessary to examine in light of the previous finding.

Ali v. Romania, 20307/02

The applicant complained that undercover agents acting as agents provocatuers constituted entrapment and his inability to question the two undercover agents violated Article 6.

While the use of special investigative methods cannot in itself infringe the right to a fair trial, the risk of police incitement occurs where the officers involved do not confine themselves to investigating criminal activity in a passive manner. For one there were no drugs found in the applicants apartment.

The courts could not have ensured respect of the principle of fairness without hearing evidence from the undercover police officers and without allowing the defendants to question them,

even in writing. The court should have given a more thorough explanation as to why it rejected the requests for evidence for additional witnesses and the videotape.

The courts did not sufficiently investigate the allegations of entrapment which deprived the applicant right to fairness and violated Article 6.1.

Rudenko v. Ukraine, 5797/05
The applicant complained that the length of the criminal proceedings against the applicant of over seven years had been incompatible with the “reasonable-time” requirement laid down in Article 6.1. Court finds a violation of Article 6.1 and 13 of the Convention.

Appendix 5

Article 8

Schonenberger and Durmaz v. Switzerland [1988], no. 11368/85

Concerning Article 8

The Court rules there was an interference of Article 8.2 which was not justified as "necessary in a democratic society" as defended by the State in its failure to forward a letter by the client's lawyer to its addressee during the clients' detention explaining his right to remain silent. According to the Court's established case law, an interference of this kind must be based on a pressing social need that is proportionate to the legitimate aim pursued. In determining whether an interference is "necessary in a democratic society" or whether there has been breach of a positive obligation, the Court will take into account that a margin of appreciation is left to the Contracting States. (see *Olsson v. Sweden*, judgment, 24 March 1988, Series A no. 130 p31 article 67 and *W v. UK*, Series A no. 121, p. 27, para 60 (b) and (d)). The scope of the margin of appreciation depends on the nature of the legitimate aim pursued and also on the particular nature of the interference involved. (*Leander v. Sweden*, judgement, p. 25 para 59)

Mr. Schoenenberger sought to inform Mr. Durmaz of his right to refuse to make any statement which is lawful in itself under Swiss Federal law. Furthermore it could be argued that it is Mr. Schoenenberger's duty pending a meeting with his client to advise him of this right. The Court found that this advice was not capable of being an act of conniving and could not threaten the normal conduct of the prosecution.

The Government emphasised that the letter was not sent by Mr. Durmaz's lawyer which the Court found irrelevant. Mr. Schonenberger was acting on the instructions of Mrs. Durmaz and had informed the Pfaffikon district prosecutor by telephone on 24 February 1984. These contacts amounted to preliminary steps intended to enable Mr. Durmaz to benefit from his right to choose a defence lawyer which is enshrined in Article 6 of the Convention. In *Golder v. UK*, judgement, Series A no. 18, p. 22 para 45, the Court ruled that correspondence with a solicitor is a preparatory step to the institution of civil legal proceedings and therefore, it is the exercise of a right embodied in Article 6.
Thus the Court found a breach of Article 8.

Eriksson v. Sweden [1988], no. 11373/85

Concerning Article 8:

Measures interfering in the right to respect for their family life must:

1. Be "in accordance with the law"

2. Have a legitimate aim (Article 8 paragraph 2)
3. Be “necessary in a democratic society”

The applicants claimed that the relevant legislation set no limits on the discretion which it conferred and its content was made so vague that its results were unforeseeable.
“In accordance with the law” contains the following:

a) Laws must be formulated with sufficient precision to enable the citizen to **foresee**, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. The law is ever evolving, however, and so vague terms may be necessary (see the Sunday Times v. UK, judgment, 26 April 1979, Series A no. 30, p. 31 paragraph 49; Barthold judgment 25 March 1985, Series A no. 90, p. 22 para 47).
b) “In accordance with the law” must relate to the domestic law but also relate to the **quality** of the law, requiring it to be compatible with the rule of law and be **accessible**. There must be a measure of protection in domestic law against arbitrary interferences by public authorities with enshrined in Article 8.1
c) Laws which confer discretion are not in themselves inconsistent with the condition of foreseeability, provided that the **scope of discretion** is indicated with sufficient clarity, having regard to the legitimate aim of the measure in question, to give the individual protection against arbitrary interference (see Gillow judgment 24 November 1986, Series A no. 109, p. 21 para 51).

1. Be “in accordance with the law”

Circumstances in which it may be necessary to take a child into public care are so variable that it is reasonable to formulate vague laws to cover every eventuality that legitimately risks the health and wellbeing of the child. In interpreting and applying legislation, preparatory work under the domestic legislation provides guidance as to the exercise of the discretion it confers. Safeguards exist against arbitrary interference such as review by administrative courts. The Court therefore concludes that the interferences in question were “in accordance with the law”.

2. Have a legitimate aim

The applicants submitted that only the “protection of health or morals” could have justified State interference and that there was no endangerment of the child’s health or morals. The Court concluded there is nothing to suggest that the Swedish legislation has any other purpose than to protect children.

3. Be “necessary in a democratic society”

The notion of necessity implies that the interference corresponds to a pressing social need and that it is proportionate to the legitimate aim pursued. In determining this, the Court will take into account that a margin of appreciation is left to the Contracting States (see W v. UK, judgment, Series A no. 121, p. 27, para 60 (b) and (d)).
In its determination, the Court is not limited to ascertaining whether a respondent State exercised its discretion reasonably, carefully and in good faith (Sunday Times v. UK, p. 36 para 9). Secondly, the Court cannot confine itself to considering the decision in isolation but must look at them in the light of the case a whole. Therefore it must determine whether the reasons adduced to justify the interferences at issue are "relevant and sufficient" (see Lingens judgment 8 July 1986, Series A no. 103, pp. 25-26 para 40).
The Court differs to the Commission who based itself on the care decisions concerning the applicants' children in combination with the placement of the children in separate foster homes and far away from the applicants, which the Court agrees with the Government in that this should be assessed separately.

The Court noted that the mother's right to Article 8 includes a right to the taking of measures with a view to her being reunite with her child, which she was prevented from doing despite the applicant's suitability to take care of children and the conditions of her home. The Supreme Administrative Court states in 11 October 1984 that "irrespective of the duration of the prohibition, the Social Council is obliged to see to it that appropriate measures aimed at reunited parents and child are taken without delay".
However under Swedish law the applicant did not have any enforceable visiting rights while the prohibition on removal was in force. The applicant was denied the opportunity to meet with her daughter to an extent and in circumstances likely to promote the aim of reuniting them. The Court concludes that the severe and lasting restrictions on access combined with the long duration of the prohibition on removal are not proportionate to the legitimate aims pursued. Accordingly there has been a violation of Article 8.

Campbell v. The United Kingdom, 13590/88
The interference of prisoner's letters of general correspondence and related to legal case between his solicitor, and correspondence with the Commission violates Article 8 of the Convention.

Case of Ludi v. Switzerland, judgment of 15/06/1992, 12433/86
The applicant complained of two breaches to Article 8 which were not "in accordance with the law".

1. For the prolonged use of an undercover agent who the applicant claims influenced his conduct;

2. For the use of telephone interception on conversations which had been provoked by the undercover agent.

The Court ruled that this had not amounted to a violation because the telephone interception had been ordered by a judge and the agent did not affect private life within the meaning of Article 8.

Messina v. Italy, 13803/93

The applicant complained of an interference with his right to respect for his correspondence under Article 8, insofar as he didn't receive letters in prison which the Government denied. This differs from previous case law (see Silver and Others v. UK judgement of 25 March 1983, and Campbell v. UK judgment of 25 March 1992, Series A nos. 61 and 233).

In this instance the Court is confronted with a dispute concerning the facts of the case rather than a legal problem. The Commission establishes and verifies the facts of a case (see *Cruz Varas and Others v. Sweden*, judgment of 20 March 1991, Series A no. 201, p. 29 para. 74) and in this instance they gave credence to the applicant's allegations. Without any proof from the Government that the applicant received his mail, the Court accordingly concludes that there has been a violation of Article 8.

C. v. Belgium, 21794/93

The applicant, who was born in Morocco and lived in Belgium since 11-years-old, was charged for selling 17kg of cannabis and a deportation order was made against him.

The Court reiterates that the concept of family on which Article 8 is based embraces the tie between a parent and his or her child. The tie can be broken by subsequent events, only in exceptional circumstances (see Gul v. Switzerland judgment 19 February 1996, Reports of Judgments and Decisions 1996-I, p.. 173-74, para. 32; Boughanemi v. France judgment 24 April 1996, Reports 1996-II, pp. 607-608, para. 35).

In the present case where the applicant was imprisoned and deported or that his son was living with his sister in law in Luxembourg, do not constitute such circumstances. The applicant also established a private life in Belgium within the meaning of Article 8, by living there since he was 11-years-old. The deportation amounted to interference with the right to respect for private and family life.

Next the Court must ascertain whether the deportation satisfied the conditions of paragraph 2 and whether it was "in accordance with the law" and was "necessary in a democratic society" for the achievement of its aims.

The Court reiterates that it is for the Contracting States to maintain public order, to control the entry and residence of aliens and notably to order the expulsion of aliens convicted of criminal offences. However their decisions, in so far as they may interfere with a right protected under

Article 8.1, be necessary in a democratic society and justified by a pressing social need and proportionate to the legitimate aim pursued.
The Court must determine whether the deportation struck a fair balance between the relevant interests, namely the applicant's right to respect for his private and family life and the prevention of disorder or crime.
No violation of Article 8.

Mehemi v. France, 25017/94
The applicant was born in France and lived there for thirty-years and his parent lived in France for forty-years. He has a wife whom he no longer lives with and three children. The applicant was caught in possession of 7kg of hashish and conspired to import 142kg. The Court had no doubt that the permanent exclusion order from France amounted to interference with Article 8 para 1.
The Court must determine whether the order satisfied the conditions of para 2, whether it was "in accordance with the law", whether it pursued one or more of the legitimate aims listed therein and whether it was "necessary in a democratic society" in order to achieve the aim or aims concerned.

1. "In accordance with the law"

It has not been contested that the order was based on French law.

2. Legitimate aim

It has not been disputed that the interference sought to achieve aims which are wholly compatible with the Convention, namely "the prevention of disorder or crime".

3. "Necessary in a democratic society"

The applicant emphasised that his permanent exclusion from France had separated him from his wife and children. He was deemed to have lost French nationality because his father had not made the declaration of recognition of French nationality provided for in the legislation governing the effects on nationality of Algerian independence. That special status also made it impossible for him to acquire French nationality automatically by virtue of the law at that time to persons born in France to non-French parents.
The Court reiterates that it is 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 must be necessary in a democratic society; i.e. justified by a pressing social need and proportionate to the legitimate aim pursued (see Bouchelkia v. France, judgment 29 January 1997, Reports of Judgments and Decisions 1997-I, p. 65 article 48).
The Court must measure a fair balance between the applicant's right to respect for his private and family life, and the prevention of disorder or crime.

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 Court considers that the measure in question was disproportionate to the aims pursued and there and been a breach of Article 8.

Mehemi v. France (No. 2), 53470/99
The applicant applied to have the exclusion order lifted, following the Court's decision that there was a violation of Article 8. The Lyon court of Appeal converted the permanent exclusion order into a ten-year exclusion order, on the ground that an exclusion order limited in time no longer constituted a disproportionate interference with the applicant's rights under Article 8.

The Court observes that under Article 46, Contracting Parties undertake to abide by the final judgments of the Court which imposes a legal obligation on the respondent obligation to choose individual measures to be adopted in its domestic legal order to put an end to the violation found by the Court and to redress so far as possible the effects (Scozzari and Giunta v. Italy (nos. 392/98 and 41963/98 paragraph 249). The Court does not have jurisdiction to verify whether a Contracting Party has complied with the obligations imposed on it by one of the Court's judgments (see Oberschlick v. Austria nos. 19255/92 and 21655/93). However there is nothing to prevent the Court from examining a subsequent application raising a new issue undecided by the judgment (Pailot v. France, 22 April 1998, p. 802 paragraph 57; Leterme v. France 29 April 1998; Rando v. Italy, no. 38498/97, paragraph 17).

The Court notes that this situation is different from these cases because there was time between the Court's original judgment and his return to France, then the period starting on his return until the date when he was informed of the revocation of the residence order.

The applicant's situation from the 1997 judgment until his return to France
The Court must determine whether the national authorities were quick to take all necessary steps to which they ought to reasonably take for the applicant's return to France. There was a delay of three and a half months with issuing the residency permit, which the Court does not consider to be excessive. No violation here.

The applicant's situation since his return to France
The authorities authorised the applicant to return to France by means of a special visa that allows him to work. He has therefore been able to renew his ties with his family. The Court reiterates from its original judgment that it does not have jurisdiction to order France to issue the applicant with a ten-year residence permit and it is for the respondent State to choose the measures to be adopted in its domestic legal order to comply with its obligations. No violation.

Dalia v. France, 26102/95
The applicant was arrested for the heroin trafficking. The applicant is an Algerian national who moved to France at 18 where she lived for 19-years. After her exclusion order she gave birth. The Court ruled that the exclusion order violated Article 8 paragraph 1.

The Court states that the interference is not so drastic as that which may result from the expulsion of applicants who were born in the host country of went there as a young child (see *C. v. Belgium*, judgement 7 August 1996, Reports 1996-III, p.924 article 34).

Baghli v. France, 34374/97
The applicant was convicted to three years' imprisonment, two suspended, and a 10-year temporary exclusion order from French territory in relation to drug dealing. Having lived in France since two-years old with his whole family who all have French nationality, the applicant complained this order violated Article 8.
The Court held this order violated Article 8.1.
The Court must determine whether the exclusion order satisfied the conditions set out in 8.2.

In accordance with law
The order was based on the Public Health Code.

Legitimate aim
The interference was compatible with the Convention for the "prevention of… crime", the "protection of health" and the "prevention of disorder".

Necessary in a democratic society
The Government argued that the applicant retained his Algerian nationality and did not apply for French nationality, he did military service in Algeria for two-years and showed no willingness to integrate into French society. He was marginalised on account of his use and trade in drugs. He supplied his companion, Mrs C., with heroin when she contracted HIV. The Lyon Court of Appeal had found that he adulterated the heroin he sold to increase profits in a way that made the drug particularly hazardous.

The Court reiterates that it is for Contracting States to maintain public order and control the entry and residence of aliens. To that end they have the power to deport aliens convicted for criminal offences (see El Boujaidi judgment, p. 1992 paragraph 39; and Boujlifa v. France judgment 21 October 1997, Reports 1997-VI, p. 2264, paragraph 42). However their decisions

must be necessary in a democratic society, that is to say, justified by a pressing social need and be proportionate to the legitimate aim pursued (see Boujlifa judgment, p. 2264 paragraph 42). The Court's task is to determine whether the measure in issue struck a fair balance between the conflicting interests of the applicant's right to respect for his private and family life and the prevention of disorder or crime and the protection of health.

The Court understands why the authorities show great firmness with regard to those who actively contribute to the spread of the scourge of drugs use (see Dalia v. France judgment 19 February 1998, Reports 1998-I, p. 92, paragraph 54).
No violation of Article 8

Note:
When examining the issue of proportionality, the European Court of Human Rights takes a number of factors into account: whether the alien was born in the host country or, if not, his age on arrival; whether his family lives there, the strength of his ties with the host country or conversely, the extent to which he has maintained links with his country of origin; the nature of the offence committed by the alien and the grounds for his conviction; the nature and the length of the main sentence; and, lastly, the period for which he is required not to re-enter the host country.

Khan v. UK, 35394/97, 12/05/2000
Concerns the use of surveillance in the house of a suspected drug trafficker, where the police obtained evidence from another man admitting to being an accomplice in a separate attempt to smuggle drugs. The applicant was convicted to three years' imprisonment.
The Court notes that it is not disputed that the surveillance amounted to an interference with the applicant's rights under Article 8.1. The issue is whether it was justified under Article 8.2, notably whether it was "in accordance with the law" and "necessary in a democratic society". "In accordance with the law" requires compliance with domestic law and also relates to the quality of that law, requiring it to be compatible with the rule of law (Halford v. UK judgment 25 June 1997, Reports of Judgments and Decisions 1997-III, p. 1017 paragraph 49). Domestic law must provide protection against arbitrary interference with an individual's right under Article 8. The law must 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 are entitled to resort to such covert measures (see Malone v. UK judgment 2 August 1984, Series A no. 82, p. 32 paragraph 67).

At the time of the event, there existed no statutory system to regulate the use of covert listening devices, although the Police Act 1997 now provides such framework. The Home Office

Guidelines at the relevant time were neither legally binding nor were they directly publicly accessible. It follows that the interference cannot be considered to be “in accordance with the law”, as required by Article 8.2. Accordingly there is a violation of Article 8. In light of this the Court is not required to determine whether the interference was “necessary in a democratic society”.

Rehbock v. Slovenia, 29462/95
The applicant complained that his correspondence with the Commission had been monitored without any justification.

The Court finds that the monitoring of the applicant’s correspondence with the Commission amounted to an interference with his rights under Article 8.1. If it is not to contravene Article 8, such an interference must have been “in accordance with the law”, have pursued a legitimate aim under paragraph 2 and have been “necessary in a democratic society” in order to achieve that aim (see Silver and Others v. UK judgment 25 March 1983, Series A no. 61, p. 32 Article 84; Petra v. Romania judgment 23 September 1998, Reports 1998-VII, p. 2853 article 36).
The interference had a legal basis, Article 211 of the Code of Criminal Procedure, and it may be assumed that it pursued the legitimate aim of “the prevention of disorder or crime”.

The Court finds no compelling reasons to regard it as necessary to monitor the correspondence, whose confidentiality was important to respect (Campbell v. UK judgment 25 March 1992, Series A no. 233, p. 22 article 62). There has been a violation of Article 8.

Peers v. Greece, 28524/95
The letters sent to him were opened by the Prison administration and not always in his presence. Violation of his right to respect for his correspondence.

This action must be done “in accordance with the law”, pursue a legitimate aim and be necessary in a democratic society in order to achieve that aim (see Silver and Others v. UK judgment 25 March 1983, Series A no. 61, p. 32 article 84; Petra v. Romania, judgment 23 September 1998, Reports 1998-VII, p. 2853 article 36).
The interference had a legal basis.

The Court does not find it necessary (Campbell v. UK, judgment 25 March 1992, Series A no. 223, p. 22 article 62).

Amrollahi v. Denmark, 56811/00

The applicant, an Iranian national with residency in Denmark, was found guilty for drug trafficking and sentenced to three years imprisonment and expelled from Denmark.

The applicant complained that if deported he would lose contact with his wife, children and stepdaughter as they cannot be expected to follow him to Iran.

1. Whether there was an interference with the applicant's right under Article 8

The removal of a person from a country where close members of his family are living may amount to an infringement of the right to respect for family life as guaranteed in Article 8.1 (see Moustaquim v. Belgium judgment, 18 February 1991, Series A no. 193 p. 18 article 16). Therefore there the expulsion order interfered with the applicant's right to respect for his family life within the meaning of 8.1.
To meet the requirements of 8.2 the court must assess whether the order was "necessary in a democratic society".

2. Whether the interference was "in accordance with the law"

It is within the law.

3. Whether the interference pursued a legitimate aim

The Court is satisfied that the measure was ordered to prevent disorder and crime in the interests of public order and security.

4. Whether the interference was "necessary in a democratic society"

Decisions to expel someone from a country must be necessary in a democratic society that is justified by a pressing social need and in particular by proportionate to the legitimate aim pursues (see Dalia v. France judgment 19 February 1998, Reports of Judgments and Decisions 1998-I, p. 91 article 52; Mehemi v. France judgment 26 September 1997, Reports 1997-VI, p. 1971 article 34).

Due to the applicant's ties with Denmark, being married to a Danish woman with a Danish child together who have no ties to Iran, the Court is of the opinion that it is impossible for the applicant and his family to relocate to Iran. Therefore the expulsion is disproportionate to the aims pursued.

Armstrong v. UK, 48521/99
The applicant was found guilty for conspiracy to supply drugs, as part of a covert surveillance operation. The applicant challenged the admissibility of the evidence on grounds of improper

compliance with the Home Office Guidelines. The taped conversations constituted the sole evidence against the applicant.

The Court recalls that at the time there existed no statutory system to regulate the use of covert recording devices by the police (see Khan v. UK, 35394/97, article 26-28).

The interference was not "in accordance with the law" as required under Article 8.2 and there has been a violation.

Lorse and Others v. The Netherlands, 52750/99
The applicants complained that Mr Lorsé's detention breached their Article 8 rights. The strip searching and monitoring of phone conversations and correspondence as well as daily inspection of his cell, prevented Mr Lorsé of a private life. They further complained of the conditions of visits which were taken place behind a glass partition.

The Court reiterates that while the prison authorities should assist him in maintaining contact with his family (see Messina v Italy, 25498/94, paragraph 61), the Court recognises that some measure of control over prisoners' contacts with the outside world is justified (Kalashnikov v. Russia, no. 47095/99).
As there was an interference with his private and family life, the court must determine whether the interference was justified under Article 8.2 i.e. whether it can be regarded as being "in accordance with the law" for the purposes of one or more of the legitimate aims referred to in Article 8.2 and whether it can be regarded as being "necessary in a democratic society".

The restrictions were in accordance with the law and pursued with the aim of the prevention of disorder or crime within the meaning of Article 8.2.

This case is different from the cases against Italy where security features of the special regime were designed in order to cut all links between the prisoners concerned and the criminal environment to which they had belonged. In the present case the measures were established to prevent escapes. No violation.

Hewitson v. The United Kingdom, 50015/99
The applicant was convicted with drug smuggling. He complained that the use of covert surveillance, which was the sole evidence used against him in Court, was not lawful under the legislation at the time.

The Government accept, following the judgment in Khan v. UK that the use of the recording device amounted to an interference with the applicant's right to private life under Article 8.1 and that the measures were not used "in accordance with law" within the meaning of Article 8.2.

The Court recalls that at the relevant time there existed no statutory system to regulate the use of covert recording devices by the police. The interferences disclosed by the measures implemented in respect of the applicant were therefore not "in accordance with the law" which amounted to a violation of Article 8.2.

Lewis v. UK, 1303/02
The applicant was convicted to 15 years imprisonment for the conspiracy to import drugs under covert surveillance. The applicant claimed he was intoxicated at the time of the recordings and was not serious.

The Court recalls that at the relevant time there existed no statutory system to regulate the use of covert recording devices by the police. Violation.

Sezen v. the Netherlands, 50252/99
The first applicant entered the Netherlands at the age of 23 and has a residence permit and formed a relationship with the second applicant who moved to Netherlands at the age of seven, holds a residence permit, is married and has a child.
The first applicant was sentenced to four years' imprisonment for being a co-perpetrator of possession 52 kg of heroin.

The applicants complained that the first applicant was not allowed to continue residing in the Netherlands invoking Article 8.

The Court must determine whether the interference was "necessary in a democratic society", that is to say justified by a pressing social need and proportionate to the legitimate aim pursued (see Dalia v. France, p. 91 paragraph 52; Boultif v. Switzerland, p. 130 paragraph 46; Jakupovic v. Austria, no. 36757/97 paragraph 25). The Court must determine if the applicants' right to respect for family life was balanced with the interests of public safety and the prevention of disorder and crime.

The Court applies the following guiding principles:
-the nature and seriousness of the offence committed by the applicant;
-the length of the applicant's state in the country;

-the time elapsed since the offence was committed and the applicant's conduct during this period;
-the nationalities of the persons involved;
-the applicant's family situation, such as length of marriage;
-whether the spouse knew about the offence at the time when he or she entered into a family relationship;
-whether there are children of the marriage and their age;
-the seriousness of the difficulties which the spouse is likely to encounter in the applicant's country of origin.

The Court understands, in view of the devastating effects drugs have on people's lives, why the authorities show great firmness to those who actively contribute to the spread of this scourge (see Baghli v. France, 34374/94 paragraph 48).

The crime had not been committed at the time of marriage. The children speak Dutch and Kurdish and not Turkish. The Court accepts that following the first applicant to Turkey would mean a radical upheaval for the second applicant and the children.

The Court has previously held that domestic measures which prevent family members from living together constitute an interference with the right protected by Article 8 and that to split up a family is an interference of a very serious order (see Mehemi v. France, 53470/99 paragraph 45).

The State failed to strike a fair balance and there had been a violation of Article 8.

Elahi v. the UK, 30034/04
The applicant was arrested for conspiracy to smuggle drugs.

The applicant complained about the use of participating informants and the use of covert listening devices to obtain material which was subsequently relied on by the prosecution. The Government accepted there had been a violation in so far as the Home Office Guidelines were not legally binding at the time.

The Court finds there had only been a breach in relation to the tape recordings from the covert listening equipment used in evidence as they were not obtained "in accordance with the law".

Yordanov v. Bulgaria, 56856/00

The applicant complained of an interference with his right to respect for his home which was searched in contravention of domestic law because there was a lack of legal justification, the procedure was not followed and was performed in the presence of two witnesses.

The Court found there was an interference with the applicant's right to respect for his home.

Whether the interference was justified, the Court must determine if it was "in accordance with the law", pursued one or more of the legitimate aims set out in Article 8.2 and was "necessary in a democratic society" to achieve the aim.

"In accordance with the law"
The search was conducted only in the presence of two witnesses and without the applicant or land owner. The Government failed to provide any information to show the search was ordered and conducted in accordance with domestic legislation. The Court concludes that the search was not conducted in accordance with law and there has been a violation of Article 8.2

The distorted vision of the UN conventions

Szuluk v. UK, 36936/05
The applicant complained that the prison authorities had intercepted and monitored his medical correspondence in breach of Article 8.

Such an interference must be "in accordance with the law", must pursue one or more of the legitimate aims referred to in paragraph 2 and be "necessary in a democratic society".

The notion of necessity implies that the interference corresponds to a pressing social need and is proportionate to the legitimate aim pursued. In determining whether and interference is "necessary in a democratic society" regard may be had to the State's margin of appreciation (see Campbell paragraph 44; Petrov, paragraph 44; Dickson v. UK, no. 44362/04, paragraph 77). While it is for the national authorities to make the initial assessment of necessity, the final evaluation on whether the reasons are relevant and sufficient will be determined by the Court.

In assessing whether the interference was necessary, the Court has developed stringent standards as regards the confidentiality of prisoners' legal correspondence. In Z v. Finland, the Court emphasised that "the protection of personal data, not least medical data, is of fundamental importance to a person's enjoyment of his or her right to respect for private and family life… Respecting the confidentiality of health data is a vital principle in the legal systems of all the Contracting Parties".

Allowing the prison medical officer to read such correspondence might lead him to encounter criticism of his own performance, which could create difficulties in respect of the applicant's prison life and treatment.

The Court does not share the view that the risk that the applicant's medical specialist could be tricked into transmitting illicit message was sufficient to justify the interference.

The Court considers that uninhibited correspondence with a medical specialist in the context of a prisoner suffering from a life-threatening condition should be afforded no less protection than the correspondence between a prisoner and a member of parliament, which the domestic court argued was a separate issue. The Court finds that the monitoring of the applicant's medical correspondence did not strike a fair balance with his right to respect for his correspondence in the circumstances and there had been a violation of Article 8.

Jarkiewicz v. Poland, 23623/07
The applicant complained under Article 8 that a registered letter sent to him by the Lublin District Court had been censored by the authorities during his detention in remand.

The Court reiterates that any "interference by a public authority" with the right to respect for correspondence will contravene Article 8 unless it is "in accordance with the law", pursues one or more of the legitimate aims referred to in paragraph 2 and is "necessary in a democratic society". Court notes that it has previously held that the censorship of an applicant's correspondence with a State authority, the Constitutional Court, was contrary to the statutory prohibition (Kwiek v. Poland, no. 51895/99 paragraph 41). Violation of Article 8.

Appendix 6

Article 10

Colombani and Others v. France, 51279/99

Following a report by the European Commission on cannabis production in Morocco, Le Monde published an article about the attitude of the police and government in abetting the production. The King of Morocco brought a criminal case against the editor and the Paris Criminal Court found that the journalist merely quoted extracts from a reliable report without distorting or misinterpreting it or making groundless attacks and consequently pursued a legitimate aim.

The King of Morocco appealed to the Paris Court of Appeal who found that it was "tainted with malicious intent". There was no good faith by the journalist who did not verify the claims.

The applicants appealed on points of law against the judgment which was dismissed by the Court of Cassation.

The applicant complained of a violation of Article 10.

The press has a duty to impart, in a manner consistent with its obligations and responsibility, information and ideas on all matters of public interest (see De Haes and Gijsels v. Belgium, judgment 24 February 1997, Reports of Judgments and Decisions 1997-I, pp. 233-34 article 37). The press serves as a "public watchdog" (see Thorgeir Thorgeirson v. Iceland, judgment 25 June 1992, Series A no. 239 p. 27 article 63; Bladet Tromso and Stensaas v. Norway, no. 21980/93, article 62).

While the press must not overstep the bounds set for "the protection of the reputation of others", its task is nevertheless to impart information and ideas on political issues and on other matters of general interest. A politician is entitled to have his reputation protected but the requirements must be weighed against the interests of open discussion of political issues, since exceptions to freedom of expression must be interpreted narrowly (see Oberschlick v. Austria, judgment 23 May 1991, Series A no. 204, pp. 25-26 article 57-59 and Vereinigun demokratischer Soldaten Osterreichs and Gubi v. Austria, judgment 19 December 1994, Series A no. 302 p. 17 article 37).

The "necessity" for any restriction on freedom of expression must be established in first place whether there is a "pressing social need" where national authorities enjoy a certain margin of appreciation. With the press, margin of appreciation is circumscribed by the interest of democratic society in ensuring and maintaining a free press. That interest will weigh heavily in the balance in determining, as must be done under Article 10.2, whether the restriction was

proportionate to the legitimate aim pursued (see Goodwin v. UK, judgment 27 March 1996, Reports 1996-II, pp. 500-01 article 40; Worm v. Austria, judgment 29 August 1997, Reports 1997-V, p. 1551 article 47).

The Court must look at the interference complained of in the light of the case as a whole and determine whether the reasons adduced by the national authorities to justify it are "relevant and sufficient" (see Fressoz and Roire v. France, 29783/95 article 45).

"Prescribed by law"
The decision was based on section 36 of the Freedom of the Press Act.

Pursued a legitimate aim
The protection of the reputation and rights of others.

"Necessary in a democratic society"
The Court notes that the general public had a legitimate interest in being informed of the European Commissions' views contained in their report.
The safeguard afforded by Article 10 to journalists in relation to reporting on issues of general interest is subject to the proviso that they are acting in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism (see Goodwin, cited above, p. 500 article 39; Fressoz and Roire, cited above article 54). Unlike the Court of Cassation, the Court finds that the information was extracted from an official report whereby independent research is not required. Otherwise the vital public-watchdog role of the press may be undermined (see Goodwin, p. 500 article 39). No reason to doubt the applicants acted in good faith.

The applicants were not able to rely on a defence of justification, proving the truth of the allegation, and this inability was a measure that went beyond what was required to protect a person's reputation and rights.

The Court notes that the domestic courts have begun to recognise that it is not necessary in a democratic society to criminalise such behaviour.

The objective for heads of States to maintain friendly relations based on trust with leaders of other States exceeds a special privilege to be shielded by criticism.

The offence of insulting a foreign head of State is liable to inhibit freedom of expression without meeting any "pressing social need" capable of justifying such a restriction. The special protection undermines freedom of expression.

The Court considers that there was no reasonable relationship of proportionality between the restrictions placed on the applicants' right to freedom of expression and the legitimate aim pursued. Violation of Article 10.

Axel Springer AG v. Germany, 39954/08
The newspaper published two articles about X, a TV actor, about his arrest for possession of cocaine. The applicant got an injunction on the publication and the newspaper complain under Article 10.
Interferences must satisfy the requirements of Article 10.2 if it was "prescribed by law", had an aim that is legitimate and was "necessary in a democratic society".

Freedom of expression carries with it "duties and responsibilities" which also apply to the media even with respect to matters of serious public concern. These duties are significant when there is a question of attacking the reputation of a named individual and infringing the "rights of others". Thus special grounds are required before the media can be dispensed from their ordinary obligation to verify factual statements that are defamatory of private individuals.

The right to protection of reputation is protected by Article 8 (see Chauvy and Others paragraph 70; Polanco Torres and Movilla Polanco v. Spain, no. 34147/06, paragraph 40). The concept of "private life" is a broad term without an exhaustive definition, which covers the physical and psychological integrity of a person and can therefore embrace multiple aspects of a person's identity, such as gender identification and sexual orientation, name or elements relating to a person's right to their image (see S. and Marper v. UK, no. 30562/04 paragraph 6). It covers personal information which individuals can legitimately expect should not be published without their consent (See Flinkkila and Others, paragraph 75; Saaristo and Others v. Finland, no. 184/06, paragraph 61).

An attack on a person's reputation must attain a certain level of seriousness and in a manner causing prejudice to personal enjoyment of the right to respect for private life (see A. v. Norway paragraph 64). Article 8 cannot be relied on in order to complain of a loss of reputation which is the foreseeable consequence of one's own actions such as the commission of a criminal offence (See Sidabras and Dziautas v. Lithuania, no. 55480/00 and 59330/00, paragraph 49).

The Court is required to verify whether the domestic authorities struck a fair balance when protection Article 8 and Article 10, which is summarised as; the contribution to a debate of general interest; how well known is the person concerned and what is the subject of the report; his or her prior conduct; the method of obtaining the information and its veracity; the content, form and consequences of the publication; and the severity of the sanction imposed.

The definition of a subject of general interest includes political issues, crimes, sporting issues and performing artists (White v. Sweden, no. 42435/02, paragraph 29; Egeland and Hanseid, paragraph 58; Leempoel & S.A. ED. Ciné Revue, paragraph 72; Nikowitz and Verlagsgruppe News GmbH v. Austria, no. 5266/03, paragraph 25; Colaco Mestre and SIC, S.A. v. Portugal no. 11182/03 and 11319/03, paragraph 28; Sapan v. Turkey, no. 44102/04, paragraph 34). It does not include rumoured marital difficulties of a president of the Republic or the financial difficulties of a famous singer (see Standard Verlags GmbH, paragraph 52; Hachette Filipacchi Associes (ICI Paris), paragraph 43).

A distinction is made between private individuals and persons acting in a public context, as political figures or public figures. A distinction is made between a politician and an individual (see Von Hannover, paragraph 63).

Where published photos and accompanying commentaries relate exclusively to details of the person's private life and have the sole aim of satisfying the curiosity of a particular readership in that respect, the public do not have a right to be informed. For this there is a narrower interpretation of freedom of expression.

The way in which the photo or report are published and the manner in which the person is represented must be taken into consideration (see Wirtschafts-Trend Zeitschriften-Verlagsgesellschaft m.b.H v. Austria, nos. 66298/01 and 15653/02, paragraph 47).

The Court finds that X was a well-known actor with a large fan club and his admirers could have been encouraged to imitate him by taking drugs, if the offence had not been committed out of public view. The actor's character as a policeman in the TV show is also relevant.

The Court agreed with the reasoning of the domestic court that the publishing of the articles was solely due to the fact that X was famous and that had it been committed by a person unknown to the public, would probably never have been reported on.

The articles did not reveal details about X's private life but mainly concerned the circumstances of his arrest (see Flinkkila and Others, paragraph 84).

The Court concludes that there is no reasonable relationship of proportionality between the restrictions imposed by the national courts on the applicant company's right to freedom of expression and the legitimate aim pursued. There is a violation of Article 10.

Blaja News SP. ZO.O v. Poland, no. 59545/10
The case concerns the publication of a drug deal involving a public prosecutor which made claims that the prosecutor and his wife were drug addicts and were sharing drugs with their colleagues. The domestic courts required that the newspaper apologise and fined.

The test of necessity in a democratic society requires the Court to determine whether the interference complain 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 are relevant and sufficient (see The Sunday Times v. the UK, paragraph 62; Skalka v. Poland m no. 43425/98 paragraph 35).

The functioning of the justice system constitutes questions of public interest (see Kudeshkina v. Russia, no. 29492/05, paragraph 46), and public prosecutors form part of the judicial machinery (see Lesnick, paragraph 54). The Court accepts that personal integrity of public prosecutors is a subject which may be of interest to the general public while it may also be necessary to protect public servants from offensive, abusive and defamatory attacks which are likely to affect them in the performance of their duties.

The article lacked evidence supporting its claims and the domestic courts gave ample opportunity for the applicant to supply evidence.

The interference is "necessary in a democratic society" and there has been no violation.

Erla Hlynsdottir v. Iceland, no. 54145/10
The newspaper published an article about two cocaine smugglers with the headline "Scared cocaine smugglers" written with a claim that they were afraid of retaliation by their accomplices and had refused to identify them. The domestic court fined the editors for defamation and declared null and void the words "cocaine smugglers" and "believing that the cocaine was still in the vehicle".

This had been one of the largest cocaine cases in Iceland and so the general public had a legitimate interest in being informed.

The Court concludes that the applicant was wrongfully charged jointly with the editor for both the headline and for not giving an official source for “believing that the cocaine was still in the vehicle” because there was no relationship between the two. Therefore there is a violation for the government failing to provide reasons that are sufficient to show that the interference was “necessary in a democratic society”.

Appendix 7

Article 13

Egmez v. Cyprus, 30873/96
The applicant complained that he did not have an effective remedy for his Article 3 complaints. The Court recalls that its finding that the applicant exhausted domestic remedies was based on the following considerations: the applicant, by complaining to the Ombudsman, had given the authorities the opportunity to put matters right by ordering an investigation capable of leading to the identification and punishment of the officers involved; this was the only remedy that was appropriate for this kind of violations. However the Attorney-General did not take any steps in this direction. Therefore there was a breach.

McGlinchey and Others v. UK, 50390/99
The applicants submitted that there was no adequate remedy for their complaints about the treatment of Judith in prison, or a remedy that would address the defects in management and policy which allowed the neglect and ill-treatment.

Article 13 guarantees the availability at the national level of a remedy to enforce the substance of the Convention rigths and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of Article 13

Mitev v. Bulgaria, 40063/98
The applicant complained that he did not have an effective remedy in relation to the excessive length of the criminal proceedings against him.

Article 13 guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms. The remedy required must be “effective” in practice as well as in law (see Kudla v. Poland, no. 30210/96, paragraph 157).

A remedy will be considered “effective” if it can be used either to expedite a decision by the courts dealing with the case, or to provide the litigant with adequate redress for delays that have already occurred (see Mifsud v. France, no. 57220/00).

At the time it was not possible for an accused person to have his case brought before the trial court if the investigation has not been completed within the statutory time-limit. There was no formal remedy under law that could have expedited the determination of the criminal charges against the applicant. There was no law to allow the possibility to obtain compensation or other redress for excessively lengthy proceedings.

Appendix 8

Optional Protocol 1 Article 1

Air Canada v. UK, 18465/91

Concerns the forfeiture of an Air Canada aircraft following the suspicion that it carried illegal drugs.

No violation of the first paragraph of P1-1. The seizure amounted to a temporary restriction on its use and did not involve a transfer of ownership.

The second paragraph of P1-1 is applicable in the present case because the release of the aircraft subject to the payment of a sum of money was in effect a measure to further the policy to prevent drug trafficking. The issue concerns whether the interference with the applicant's property rights was in conformity with the State's right under Article 1 paragraph 2.

According to the Court's case law, the interference must 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. This balance is reflected in the structure of Article 1 as a whole; there must therefore be a reasonable relationship of proportionality between the means employed and the aim pursued. (see Gasus Dosier- und Fordertechnik GmbH v. the Netherlands, judgments 23 February 1995, Series A no. 306-B, p.49, para. 62).

The Court finds the measure to be proportionate in the UK's pursuit to prevent drug trafficking.

The applicant further complains that the commissioners did not justify their reasons in seizing the vehicle. They would have had to open a judicial review proceedings under English law into the seizure which the applicant argues only examines the "reasonableness" of the exercise and not the proportionality which is not part of English law. The Court recalls case-law which concluded the scope of judicial review under English law as sufficiently satisfying the requirements of paragraph 2. (see, AGOSI judgment, pp. 20-21, paras. 59-60).

Given the value of the cannabis resin that was forfeited compared to the 50,000 fine for Air Canada, the Court does not find this to be disproportionate.

Appendix 9

Optional Protocol 4 Article 2

Olivieira v. the Netherlands, 33129/96
The applicant was instructed by police not to enter an emergency zone for a number of hours because the applicant was using or possessing hard drugs. The applicant breached this request and the police requested the Burgomaster of Amsterdam to deliver a 14 day ban from entering the emergency zone.

The applicant complains that the 14-day order violated Article 2 of Protocol No. 4, freedom of movement.

Restriction of the applicant's rights

The Government did not dispute that there had been a restriction of the applicant's rights as set forth in Article 2.1 Protocol No 4.

In accordance with the law

The order was "in accordance with the law". The applicant was ordered to leave the area six times for eight hours. He was told that he would have either to desist from using or possessing hard drugs in the emergency area as it constituted a disturbance of public order, or to leave the area. He was warned that continued breaches of the order would impose a 14-day prohibition order.

It follows that the applicant was able to foresee the consequences of his acts and that he was enabled to regulate his conduct in the matter before the prohibition order was imposed on him. There were also adequate safeguards afforded against possible abuse.

Justified by the public interest in a democratic society

The Court accepts that special measures might have had to be taken to overcome the emergency situation in the area concerned at the relevant time. It cannot be said that the national authorities overstepped their margin of appreciation when the Burgomaster imposed a prohibition order.

4 votes to 3 there is no violation.

Dissenting opinion:
They cannot find that the restriction was "in accordance with law". They do not think that the requirements of "accessibility" and "foreseeability" were met. There is no municipal by-law

regulating these matters. The precise text on which the 14 day prohibition order was based could not be known or studied by the applicant or any person advising him. An oral warning could not be considered proper substitute for public access to the official text (see Silver and Others v. UK, judgment 25 March 1983, Series A no. 61, pp. 33 and 35-36 articles 87 and 93).