

In the case of Salerno v. Italy*,

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention")** and the relevant provisions of the Rules of Court, as a Chamber composed of the following judges:

Mr	R. Bernhardt, President,
Mr	F. Matscher,
Mr	R. Macdonald,
Mr	C. Russo,
Mr	S.K. Martens,
Mrs	E. Palm,
Mr	I. Foighel,
Mr	R. Pekkanen,
Mr	A.N. Loizou,

and also of Mr M.-A. Eissen, Registrar, and Mr H. Petzold, Deputy Registrar,

Having deliberated in private on 29 May and 22 September 1992,

Delivers the following judgment, which was adopted on the last-mentioned date:

Notes by the Registrar

* The case is numbered 83/1991/336/409. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

** As amended by Article 11 of Protocol No. 8 (P8-11), which came into force on 1 January 1990.

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 13 December 1991, within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 11955/86) against the Italian Republic lodged with the Commission under Article 25 (art. 25) by an Italian national, Mr Vincenzo Salerno, on 18 January 1986.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Italy recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 6 para. 1 (art. 6-1).

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of the Rules of Court, the applicant stated that he wished to take part in the proceedings and designated the lawyer who would represent him (Rule 30).

3. The Chamber to be constituted included ex officio Mr C. Russo, the elected judge of Italian nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 24 January 1992, in the presence of the

Registrar, the President drew by lot the names of the other seven members, namely Mr F. Matscher, Mr L.-E. Pettiti, Mr R. Macdonald, Mr R. Bernhardt, Mr S.K. Martens, Mr I. Foighel and Mr R. Pekkanen (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

4. Mr Ryssdal assumed the office of President of the Chamber (Rule 21 para. 5) and, through the Registrar, consulted the Agent of the Italian Government ("the Government"), the Delegate of the Commission and the applicant's lawyer on the organisation of the procedure (Rules 37 para. 1 and 38). Pursuant to the order made in consequence, the Registrar received the applicant's memorial on 22 April. In a letter of 4 May the Government indicated that they would be referring to the observations they had filed in the proceedings before the Commission. The Delegate of the Commission made no comments.

5. On 20 May the Commission produced the file on the proceedings before it, as requested by the Registrar on the President's instructions.

6. In accordance with the decision of the President, who had given the applicant leave to use the Italian language (Rule 27 para. 3), the hearing took place in public in the Human Rights Building, Strasbourg, on 25 May 1992. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) for the Government

Mr G. Raimondi, magistrato, on secondment to the Diplomatic Legal Service, Ministry of Foreign Affairs,	Co-Agent,
Mr G. Manzo, magistrato, on secondment to the Ministry of Justice,	Counsel;

(b) for the Commission

Mr A.S. Gözübüyük,	Delegate;
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(c) for the applicant

Mr M. de Stefano, avvocato,	Counsel,
Mr V. Mazzarelli, avvocato,	Adviser.

The Court heard addresses by them as well as replies to questions put by the Court and by one of its members.

7. At the deliberations on 22 September 1992 Mr Ryssdal and Mr Pettiti, who were unable to take part in the further consideration of the case, were replaced by the Court's Vice-President, Mr Bernhardt, who sat as President of the Chamber, and Mr A.N. Loizou, substitute judge, respectively; Mr Bernhardt in his turn was replaced as a member of the Chamber by Mrs E. Palm, also a substitute judge (Rule 21 paras 3 (b) and 5, Rule 22 para. 1 and Rule 24 para. 1).

AS TO THE FACTS

8. Mr Vincenzo Salerno lives in Rome. Pursuant to Article 31 para. 1 (art. 31-1) of the Convention, the Commission established the following facts (paragraphs 15-24 of its report):

"15. In June 1973 the applicant brought proceedings against the notaries' pension fund (Cassa Nazionale di Notariato) before the Rome magistrate's court (pretore). He said he had worked as an auxiliary notary (notaio coadiutore) for nineteen years and had paid into the notaries' pension fund

contributions equal to 20% of the fees he had earned, half of which, he maintained, had legally been his.

16. He accordingly sought recognition of his right to join the fund and to draw the pension payable to its members.

17. Dismissal of his application became final with a Court of Cassation judgment of 6 June 1980. The accompanying statement of reasons said that an auxiliary notary worked for the notary and, under the relevant provisions, had no entitlement to the fees which he earned on the notary's behalf. Contributions paid out of such fees entitled only the notary, who paid them into the notaries' pension fund through the auxiliary notary.

18. On 8 April 1982 the applicant instituted further proceedings in the Rome magistrate's court to have the notaries' pension fund repay old-age pension contributions he had paid into it from fees he had earned as an auxiliary notary, half of which, he contended, had legally been his. At the same time he instituted proceedings against the Minister of Justice.

19. On 25 October 1982, through the chairman of its governing board, the pension fund opposed the applicant's claim, arguing inter alia that it was barred by the Court of Cassation judgment of 6 June 1980. The Minister of Justice argued that there was no cause of action against him.

20. The hearing in the magistrate's court was held on 4 March 1983. On 12 May 1983 the court dismissed the applicant's claim. On the one hand, it found that there was no cause of action against the Minister of Justice. On the other, it noted that the applicant's case rested on the allegation of entitlement to half the fees earned by his work as an auxiliary notary.

But in its judgment of 6 June 1980 the Court of Cassation had already ruled that he had not had any entitlement to those fees and that the contributions had been paid for the benefit of the notary himself, who alone had any legal relationship with the notaries' pension fund.

21. On 21 July 1983 the applicant appealed against the judgment. The Rome District Court heard the case on 14 November 1984 and dismissed the appeal. The judgment was filed with the registry on 22 January 1985.

22. On 10 April 1985 the applicant appealed to the Court of Cassation, challenging in particular the lower courts' finding that his claim failed because the judgment of 6 June 1980 had become final. On 26 October 1985 he applied to have his case examined. On 12 June 1986 the appeal was dismissed. The judgment was filed with the Court of Cassation registry on 1 April 1987.

23. The judgment noted that the applicant's claim was based on the allegation of entitlement to half the fees earned by his work as an auxiliary notary and consequently to half the contributions paid in respect of those fees. It further noted that it had disallowed that claim in its judgment of 6 June 1980, which on that issue had become final (*giudicato esterno*). The applicant could therefore not make the claim again.

24. It likewise dismissed his application for a reference to the Court of Justice of the European Communities for a

preliminary ruling. That application, which had also been made unsuccessfully at the previous appeal stage, argued that the regulations on notaries' pay and notaries' old-age insurance were in breach of Community rules on free movement of services. The Court of Cassation stated that it could not see how the regulations could possibly interfere with free movement of services within the Community."

PROCEEDINGS BEFORE THE COMMISSION

9. The applicant applied to the Commission on 18 January 1986. Relying on Article 6 para. 1 (art. 6-1) of the Convention, he complained that the proceedings he had brought on 8 April 1982 had taken too long and that the courts that had heard the case had not been impartial.

10. On 5 March 1990 the Commission declared the second complaint inadmissible but found the application (no. 11955/86) to be admissible in respect of the first complaint. In its report of 5 September 1991 (made under Article 31) (art. 31), the Commission expressed the opinion, by sixteen votes to four, that there had been a breach of Article 6 para. 1 (art. 6-1). The full text of the Commission's opinion and of the dissenting opinion contained in the report is reproduced as an annex to this judgment*.

* Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 245-D of Series A of the Publications of the Court), but a copy of the Commission's report is available from the registry.

GOVERNMENT'S FINAL SUBMISSIONS TO THE COURT

11. At the hearing the Government asked the Court to hold that there had been no violation of the Convention in the case.

AS TO THE LAW

ALLEGED VIOLATION OF ARTICLE 6 PARA. 1 (art. 6-1)

12. Mr Salerno complained of the length of time taken to try the second action he brought before the competent courts. He relied on Article 6 para. 1 (art. 6-1) of the Convention, whereby

"In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

A. Applicability of Article 6 para. 1 (art. 6-1)

13. The applicant and the Commission considered this provision to be applicable in the instant case, whereas the Government maintained the opposite.

14. Article 6 para. 1 (art. 6-1) extends to "contestations" (disputes) over (civil) "rights" which can be said, at least on arguable grounds, to be recognised under domestic law, irrespective of whether they are also protected under the Convention (see, as the most recent authority, the Editions Périscope v. France judgment of 26 March 1992, Series A no. 234-B, p. 64, para. 35).

15. The Government submitted that the action brought on 8 April 1982 was not arguable: the Court of Cassation in its judgment of 6 June 1980, in which it had dismissed Mr Salerno's application for membership of the notaries' pension fund, had already by implication answered in the negative the question of whether there was any right

to repayment of contributions paid to that fund.

16. Like the applicant and the Commission, the Court notes that this was a disputed issue, on which only the competent courts could rule.

Moreover, the first action, which was finally disposed of by the Court of Cassation's judgment referred to above, was brought to secure recognition of a right to old-age benefits, whereas the second action, which ended on 1 April 1987, was for repayment of contributions to the pension fund in question. Above all, the courts to which the fresh application was made in 1982 acknowledged that the applicant's arguments were sufficiently tenable, since they held the action to be admissible.

Since, furthermore, the claimed right was undoubtedly a civil one, Article 6 para. 1 (art. 6-1) applied in the instant case.

B. Compliance with Article 6 para. 1 (art. 6-1)

17. It remains to be ascertained whether or not a "reasonable time" was exceeded.

The applicant and the Commission said it had been; the Government maintained it had not been.

18. The period to be considered began on 8 April 1982, with the institution of proceedings against the notaries' pension fund in the Rome magistrate's court, and ended on 1 April 1987, when the Court of Cassation's judgment was filed. It therefore lasted for nearly five years.

19. The reasonableness of the length of proceedings is to be determined with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case, which in this instance call for an overall assessment.

20. The Government relied on the excess workload of the courts that dealt with the case.

The applicant maintained that the case was not complex and that the relevant authorities had not complied with the time-limits provided for in the Code of Civil Procedure.

21. Like the Commission, the Court notes several periods of inactivity: the Rome District Court waited sixteen months before hearing Mr Salerno's appeal; while in the Court of Cassation the hearing took place fourteen months after the appeal was lodged, and the judgment was filed in the registry about ten months after it was adopted.

Nevertheless, having regard to the fact that the case came before three different courts, the delays that occurred do not appear substantial enough for the total length of the proceedings to have exceeded an acceptable limit in the circumstances of the present case.

22. There has accordingly been no breach of Article 6 para. 1 (art. 6-1).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that Article 6 para. 1 (art. 6-1) applies in the instant case;

2. Holds that there has been no breach of it.

Done in English and in French, and delivered at a public

hearing in the Human Rights Building, Strasbourg, on 12 October 1992.

Signed: For the President
Alphonse SPIELMANN
Substitute Judge

Signed: Marc-André EISSEN
Registrar

In accordance with Article 51 para. 2 (art. 51-2) of the Convention and Rule 53 para. 2 of the Rules of Court, the concurring opinion of Mr Martens, approved by Mr Foighel and Mr Pekkanen, is annexed to this judgment.

Initialled: A. S.

Initialled: M.-A. E.

CONCURRING OPINION OF JUDGE MARTENS,
APPROVED BY JUDGES FOIGHEL AND PEKKANEN

1. I share the opinion of my colleagues as to the applicability of Article 6 para. 1 (art. 6-1), but I do not agree with their reasoning. More specifically, I think that the Court should have put aside as immaterial the Government's argument that the (second) action brought by the applicant (on 8 April 1982) was not "arguable" (by which the Government evidently meant that it was clear beforehand that it had no chances of success whatsoever).

2. It is true that this argument seems to find support in the case-law of the Court in so far as it has been held repeatedly(1) - and has indeed been reiterated in the present judgment - that Article 6 (art. 6):

[only](2) extends to "contestations" (disputes) over (civil) "rights and obligations" which can be said, at least on arguable grounds(3), to be recognised under domestic law".

(1) See, amongst other judgments cited below: the Lithgow and Others v. the United Kingdom judgment of 8 July 1986, Series A no. 102, p. 70, para. 192, the W. v. the United Kingdom judgment of 8 July 1987, Series A no 121, p. 32, para. 73, the Pudas v. Sweden judgment of 27 October 1987, Series A no 125-A, p. 13, para. 30, and the H. v. Belgium judgment of 30 November 1987, Series A no 127-B, p. 31, para. 40.

(2) Beginning with the Neves e Silva v. Portugal judgment of 27 April 1989 (see p. 61, note 4, below [our footnote (25)]) the word "only" has been dropped, which makes the formula rather ambiguous; I take it, however, that the formula still is to be understood in a restrictive sense.

(3) Emphasis added.

However, making the applicability of Article 6 (art. 6) conditional on whether or not the applicant's claim as to his (civil)(4) rights and obligations is "arguable" is justified - if at all - only where the complaint to the Convention institutions concerns lack of access to a tribunal fulfilling the conditions of paragraph 1 of this provision. Where the applicant protests that the national court which has adjudicated on his claim lacked independence, was not impartial, denied him a public hearing, did not decide within a reasonable time or otherwise disregarded principles of a fair hearing, there is no room for the "arguability" test.

(4) The Court itself usually puts the word "civil" between brackets; I would merely add that in this opinion I am only concerned with the arguability of "rights and obligations" as such; whether or not those rights and obligations are "civil" within the meaning of Article 6 (art. 6) is, also in my opinion, decisive both in cases where the right of access to a court is at stake and in cases where other violations of Article 6 para. 1 (art. 6-1) are alleged; that point, however, does not enter into the present discussion.

3.1 Before presenting my arguments for this opinion I will try to ascertain the meaning of the "arguability" test: what does the Court mean exactly when it requires that there must be a dispute over "rights and obligations" which can be said, at least on arguable grounds, to be recognised under domestic law?

To answer this question, an inquiry into the genesis of the formula is, if not indispensable, at any rate rewarding.

3.2.1 In the context of Article 6 (art. 6) the "arguability" test emerged firstly in paragraph 55 of the *Ashingdane v. the United Kingdom* judgment of 28 May 1985(5) with regard to a complaint about lack of access to a court. In that paragraph the Court referred to paragraph 44 of its *Le Compte, Van Leuven and De Meyere v. Belgium* judgment of 23 June 1981(6) and to paragraph 81 of its *Sporrong and Lönnroth v. Sweden* judgment of 23 September 1982(7). However, neither of these judgments used the formula introduced in paragraph 55 of the *Ashingdane* judgment, according to which the "right to a court" "may be relied on by anyone who considers on arguable grounds(8) that an interference with his (civil) rights is unlawful". What the Court actually said in the first of these judgments will be quoted in paragraph 3.2.2 below. What the Court in its *Sporrong and Lönnroth* judgment actually found to be decisive for holding Article 6 (art. 6) to be applicable was that there existed a difference of view between the applicants and the authorities as to the lawfulness of certain measures affecting the applicants' property rights and that this difference was of a serious nature(9).

(5) Series A no. 93, p. 24.

(6) Series A no. 43, p. 20.

(7) Series A no. 52, p. 30.

(8) Emphasis added.

(9) See also the *Bentham v. the Netherlands* judgment of 23 October 1985, Series A no. 97, p. 15, para. 32, sub-paragraph (c) and the *Van Marle and Others v. the Netherlands* judgment of 26 June 1986, Series A no. 101, p. 11, para. 32, sub-paragraph (b).

3.2.2 The meaning of the latter formula can only be understood in the light of the Court's originally rather broad wording of the right of access to a court implied in Article 6 para. 1 (art. 6-1). In its *Golder v. the United Kingdom* judgment of 21 February 1975(10) the Court said that Article 6 para. 1 (art. 6-1):

"secures to everyone the right to have any claim(11) relating to his civil rights and obligations brought before a court";

and in its above-mentioned *Le Compte, Van Leuven and De Meyere* judgment it inferred therefrom that Article 6 (art. 6):

"may be relied on by anyone who considers(12) that an interference with the exercise of one of his (civil) rights is unlawful".

(10) Series A no. 18, p. 18, para. 36.

(11) Emphasis added.

(12) Emphasis added.

The latter wording had evidently been borrowed from paragraph 64 of the *Klass and Others v. Germany* judgment 6 September 1978(13) where the Court used similarly broad terms when it held that Article 13 (art. 13):

"requires that where an individual considers himself(14) to have been prejudiced by a measure allegedly in breach of the Convention, he should have a remedy"

and concluded that Article 13 (art. 13) thus guarantees an "effective remedy before a national authority"

"to everyone who claims(15) that his rights and freedoms under the Convention have been violated".

(13) Series A no. 28, p. 29, para. 64.

(14) Emphasis added.

(15) In italics in the judgment.

3.2.3 In this older case-law both "rights of access" had thus been made conditional on the mere subjective views of the individual concerned. Apparently the Court felt that this went a little too far and that there was a need for some restriction allowing for a certain measure of control by the Convention institutions. In its *Sporrong and Lönnroth* judgment it formulated this restriction - in the context of the right of access to a court under Article 6 (art. 6) - by requiring that the dispute must be "genuine and of a serious nature". In its *Silver and Others v. the United Kingdom* judgment of 25 March 1983(16) it had - in the context of the right of access to a national authority under Article 13 (art. 13) - introduced a differently worded test reformulating its above-quoted *Klass* decision by saying that

"where an individual has an arguable claim(17) to be a victim of a violation of the rights set forth in the Convention, he should have a remedy before a national authority".

(16) Series A no. 61, p. 42, para. 113.

(17) Emphasis added.

In its above-mentioned *Ashingdane* judgment the Court evidently came to the conclusion that the latter test served the same purpose as the former and therefore adopted it also with regard to the right of access to a court under Article 6 (art. 6), thus bringing both rights of access in line as far as the said restriction is concerned.

This then led to the adoption - in paragraph 81 of the James and Others v. the United Kingdom judgment of 21 February 1986(18) - of the formula quoted in paragraph 2 above. Although that formula was then adopted in the context of a complaint about lack of access to a court, its wording is such that it appears to be a general prerequisite for the applicability of Article 6 (art. 6). *Hinc lacrimae*.

(18) Series A no 98, p. 46.

3.3 The analysis of the formula's genesis in paragraph 3.2 makes it clear that it serves only a rather limited purpose. It seems reasonable to suppose that its introduction was connected with the "victim" requirement of Article 25 (art. 25). In principle it does not suffice for an individual applicant to allege that in a particular member State it is impossible to bring claims of a certain type before the courts; the lack of access complained of must actually have been detrimental to him. Apparently the Court considered that the latter requirement was only met when the claim which allegedly could not be brought before a court (or before a national authority) had at least some verifiable basis in fact as well as in law.

Accordingly, the "arguability" test has nothing to do with the chances of success of the applicant's action had it been possible for him to bring it before a national court. It is not for the European Court to express an opinion on those chances(19). The Convention institutions need only be satisfied that the claim is "arguable" in the sense that it finds support in demonstrable facts and is not clearly excluded by national law. The James and Others judgment seeks to justify the latter part of this restriction by claiming that neither Article 6 (art. 6) nor Article 13 (art. 13) requires that there be a national court with competence to invalidate or override national law(20).

(19) See the Baraona v. Portugal judgment of 8 July 1987, Series A no. 122, p. 17, para. 40 in fine.

(20) Series A no 98, p. 46, para. 81, and p. 47, para. 85.

3.4 Even thus narrowly construed, the formula is open to the criticism levelled at it by Judge Lagergren in his separate opinion in the Ashingdane judgment. In substance Judge Lagergren argued that, whereas - in order to guarantee equality of rights under the Convention - the terms "rights" and "obligations" in Article 6 para. 1 (art. 6-1) should be taken to have an autonomous meaning, it cannot be accepted that the right of access to a court depends on whether, in a certain factual situation, national law does or does not permit the bringing of an action for interference with a "right" or non-fulfilment of an "obligation". This criticism has since then been subscribed to by many other judges(21). In the present case it is, however, not necessary for me to take a stand as to whether I also subscribe to it. I only draw attention to that criticism in order to make it clear that already in the context of a complaint about lack of access to a court the "arguability" test is questionable.

(21) See, among others: the joint separate opinion of Judges Lagergren, Pinheiro Farinha, Pettiti, Macdonald, De Meyer and Valticos in the case of W. v. the United Kingdom, Series A no. 121, p. 39, and the separate opinion of Judge De Meyer in the case of H. v. Belgium, Series A no. 127-B, p. 48.

4.1 This is, at the same time, the first argument for not applying that test with regard to other complaints under Article 6 para. 1 (art. 6-1), such as indicated at the end of paragraph 2 (art. 6-2) above. In the context of a complaint about lack of access the test, however open to criticism, may be indispensable in order to enable the Convention institutions to control whether the applicant is a victim (by ascertaining whether the claim which is the object of his complaint has at least a minimum of reality and seriousness). Where the applicant has in fact had access to a court which has decided on the merits of his claim, such control is superfluous, with the result that it is not necessary to resort to a test which is open to serious criticism.

4.2 I have to admit, however, that the Court - undoubtedly as a consequence of the general character of the formula introduced by its *James and Others* judgment to which I have already drawn attention (see paragraph 3.2.3 above) - has applied the "arguability" test several times⁽²²⁾ in cases of the latter type: see paragraph 41 of its *Baroana* judgment of 8 July 1987⁽²³⁾; paragraphs 40-43 of its *H. v. Belgium* judgment of 30 November 1987⁽²⁴⁾; paragraph 37 of its *Neves e Silva* judgment of 25 May 1989⁽²⁵⁾; and paragraph 38 of its *Editions Périscope v. France* judgment of 26 March 1992⁽²⁶⁾.

⁽²²⁾ It is worth while to note, however, that where in cases of this type the applicability of Article 6 para. 1 (art. 6-1) is contested, the point is sometimes decided without any reference to arguability at all; see, for instance, the *Håkansson and Sturesson v. Sweden* judgment of 21 February 1990, Series A no. 171, p. 19, para. 60.

⁽²³⁾ See p. 60, note 1, above [our footnote (19)].

⁽²⁴⁾ Series A no. 127, pp. 31-32.

⁽²⁵⁾ Series A no. 153-A, p. 14.

⁽²⁶⁾ Series A no. 234-B, p. 65.

It should, however, be noted that on every occasion the Court concluded that the requirement was met and that the applicant had an arguable case. Furthermore, it should be noted that in the latter two judgments the Court stressed the marginal character of the test by holding that "for the purposes of Article 6 para. 1 (art. 6-1) it is enough to determine" whether the applicant's arguments "were sufficiently tenable" and that in its judgment of 26 March 1992 it indicated that the mere fact that the national courts have ruled on the merits of the case suffices for holding that this requirement is fulfilled, even where these courts have dismissed the applicant's claim⁽²⁷⁾. This suggests that, in the context of complaints concerning a violation of Article 6 (art. 6) by courts which have ruled on the merits of the applicant's case, the "arguability" test has been virtually abandoned.

⁽²⁷⁾ In paragraph 41 of its aforementioned *Baroana* judgment (see page 60, note 1 [our footnote (19)], above) the Court had already thought fit to point out that the national court had given a preliminary decision declaring the applicant's case admissible and the State did not appeal.

4.3 One must indeed query what useful purpose is served by applying the "arguability" test - construed as indicated in paragraph 3.3 above - where the applicant has actually had access to a court which has given judgment on the merits of his claim but, according to the applicant, in doing so has violated the requirements of Article 6

para. 1 (art. 6-1) either because it did not offer the guarantees required by that provision or because it disregarded principles of a fair hearing. When the applicant has won his case but complains about the length of the proceedings, could this Court still hold that he had no arguable claim and therefore refuse to examine his complaint? And when an applicant who has lost his case brings the same complaint, why should the Court refuse to examine it on the mere ground that it was to be expected that the national courts would reject the applicant's claim as it was not "arguable"? Was the applicant in such cases perhaps not a victim of a violation of the obligation to determine his (civil) rights and obligations within a reasonable time?

In my opinion, there is a violation of Article 6 (art. 6) if the plaintiff is told that his claim does not find support in the facts - or is excluded by the law - only after an unreasonable time. Or if he is so told by a court which lacks the required independence or impartiality. Such violations of general principles of the proper administration of justice have nothing to do with the quality of the claim brought before the courts. The hearing of non-arguable claims should also be fair.