EUROPEAN COURT OF HUMAN RIGHTS

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Press release issued by the Registrar

Chamber judgments concerning
Czech Republic, Finland, France, Romania, Spain,
Turkey and the United Kingdom

The European Court of Human Rights has today notified in writing the following 13 Chamber judgments, of which only the friendly-settlement judgments are final.[1]

Violation Article 6 § 1
Article 1 of Protocol No. 1 – inadmissible

(1) Schmidtová v. Czech Republic (application no. 48568/99)

Length of administrative and judicial proceedings

The applicant, Berta Schmidtová, has dual Czech and German nationality. She was born in 1920 and lives in Brno. Her husband owned agricultural land and buildings in Brno, which were confiscated in 1945 pursuant to Presidential decree no. 12/1945. The applicant's husband died in 1951.

At some point between 18 and 21 December 1992 Mrs Schmidtová informed the Land Registry Office of the town of Brno (*pozemkový úřad magistrátu města Brna*) that she intended to seek restitution of the properties that had been confiscated. She requested the occupiers to return the properties to her. The Land Registry Office issued an administrative decision turning down most of her requests, whereupon the applicant sought judicial review in the Regional Court (*krajský soud*). Those proceedings are still pending.

The applicant complained, under Article 6 § 1 (right to a hearing within a reasonable time) of the European Convention on Human Rights, of the length of proceedings for the restitution of the properties confiscated by the State. She also complained, under Article 1 of Protocol No. 1 (protection of property), of the financial consequences of the delays in the proceedings.

The European Court of Human Rights noted that the dispute had given rise to an administrative procedure followed by judicial proceedings. Under domestic law, the proceedings were deemed to have started 60 days after the applicant's letters before action to the occupiers of the properties concerned. The proceedings were still pending after 10 years and 3 months.

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1. Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its Protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

The Court found that the case had been complex. However, although there had been delays attributable to the applicant, they were minor when compared to the overall length of the proceedings. There had been periods of inaction on the part of the national authorities, who had not always acted expeditiously. There was a lot at stake for the applicant, particularly in view of her age and declining health. Accordingly, the Court found that the proceedings had not been heard within a "reasonable time" within the meaning of Article 6 § 1 of the Convention and held unanimously that there had been violation of that provision.

As to the applicant's complaint of a violation of her right to the peaceful enjoyment of her possessions, the Court noted that the issue was still before the domestic courts. Consequently, it declared that part of the application inadmissible for failure to exhaust domestic remedies.

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicant 6,000 euros (EUR) for non-pecuniary damage and EUR 500 for costs and expenses. (The judgment is available only in French.)

(2) Hyvönen v. Finland (no. 52529/99) ***Friendly settlement***

Appeal struck out after applicant's failure to attend hearing

Martti Hyvönen, a Finnish national, was born in 1928 and lives in Turku (Finland). On 16 June 1998 he was convicted of aggravated concealment of stolen goods and aggravated forgery and sentenced to 18 months' imprisonment. His appeal was struck out after he had failed to attend the hearing – allegedly due to dementia and other age-related illnesses. His request for the proceedings to be reopened was dismissed on 15 July 1999. He was refused leave to appeal.

Mr Hyvönen complained, under Article 6 §§ 1 and 3 (c) and (d) of the Convention, that he had been denied a fair hearing in the criminal proceedings because his dementia and other age-related illnesses were not accepted as valid reasons for his failure to attend the appeal hearing. Furthermore, his lawyer was unable to submit pleadings or re-examine a witness.

The case has been struck out following a friendly settlement in which EUR 2,500 is to be paid for non-pecuniary damage and EUR 3,500 for costs and expenses. (The judgment is available only in English.)

Violation Article 1 of Protocol No. 1

(3) SA Cabinet Diot and SA Gras Savoye v. France (nos. 49217/99 and 49218/99)

Violation of property right through failure to reimburse VAT paid in error

The applicants, Cabinet Diot and Gras Savoye, are two insurance broking companies whose head offices are in Paris and Neuilly-sur-Seine respectively.

They were liable to value added tax (VAT) on their trading activities for 1978. However, the Sixth Directive of the Council of the European Communities, which came into force on 1 January 1978, provided an exemption from VAT for insurance and reinsurance transactions. A further Council directive issued on 30 June 1978 granted France additional time in which to implement the Sixth Directive. However, since the new directive did not

have retroactive effect, the Sixth Directive remained applicable from 1 January 1978 to 30 June 1978.

Relying on the Sixth Directive, the applicant companies claimed reimbursement of the VAT paid in error for the year 1978. Their claims were dismissed by the administrative court and the *Conseil d'Etat*, notably on the ground that a European directive could not be relied on directly to defeat a provision of domestic law. Both companies subsequently lodged further appeals which were dismissed by the *Conseil d'Etat* on 9 December 1998.

The applicant companies complained, under Article 1 of Protocol No. 1 (protection of property) to the Convention, that they had been unable to obtain reimbursement of the VAT paid for 1978.

The Court referred to its case-law and noted that the applicant companies had had claims against the State for VAT paid in error for the period from 1 January to 30 June 1978 and, in any event, at least a legitimate expectation of securing repayment.

The interference with the applicants' property had not been necessary in the "general interest". Both the dismissal of the applicant companies' claims against the State and the lack of an adequate domestic remedy to ensure that their right to the peaceful enjoyment of their possessions was protected had upset the fair balance that had to be maintained between the demands of the general interest of the community and the requirements of the protection of the fundamental rights of the individual. Accordingly, the Court held unanimously that there had been a violation of Article 1 of Protocol No. 1.

Under Article 41 (just satisfaction) of the Convention, the Court awarded Cabinet Diot EUR 102,807.50 and Gras Savoye EUR 275,991.57 for pecuniary damage. It also awarded each of the companies EUR 15,244.90 for costs and expenses. (The judgment is available only in French.)

(4) Coste v. France (no. 50632/99) ***Violation Article 6 § 1***

Length of criminal proceedings

Pascal Coste is a French national who was born in 1955 and lives at Verdière. He was involved in a brawl with police officers on 21 January 1984 and arrested the same day by other police officers.

On 16 March 1984 the police officers lodged a criminal complaint and applied for leave to join the proceedings as civil parties. A judicial investigation was started, the applicant being charged with common assault, assaulting police officers, insulting behaviour and obstructing an officer in the execution of his duty. The Criminal Court gave him a two months' suspended prison sentence. The police officers' application to join the proceedings as civil parties was granted. The proceedings ended on 23 February 1999 with the dismissal of the applicant's appeal to the Court of Cassation.

Relying on Article 6 § 1 (right to a trial within a reasonable time) of the Convention, the applicant complained of the excessive length of the proceedings.

The Court noted that it was not clear from the case file when exactly the "criminal charges" within the meaning of the Convention had been brought against the applicant. Consequently, it found that the proceedings had lasted a minimum of 14 years, 11 months and 7 days if the date the police officers started the proceedings was taken as the starting point, and a maximum of 15 years, 1 month and 2 days if the date of the applicant's arrest was taken as the starting point.

Having examined the circumstances of the case, the Court found that although the applicant had contributed to delays in the proceedings, most of the delays were attributable to the courts. The Court found that the applicant's case had not been heard within a "reasonable time" within the meaning of Article 6 § 1 of the Convention and held unanimously that there had been a violation of that provision.

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicant EUR 8,000 for non-pecuniary damage. (The judgment is available only in French.)

Violations Article 6 § 1
(5) Dickmann v. Romania (no. 36017/97) ***Violation Article 1 of Protocol No. 1***

Nationalisation of property

Dora Dickmann is a Romanian national who was born in 1932 and lives in Tel Aviv (Israel). In 1950 the Romanian State nationalised property in Bucharest which her parents had purchased in 1938. The property comprised a block of five flats and adjoining land.

As heir to the estate, Ms Dickmann brought an action claiming title to the property. The tribunals of fact found in her favour in a judgment that became final and unappealable. However, the Supreme Court of Justice granted an application by the Principal State Counsel for Romania to have that final judgment set aside, on the ground that the ordinary courts had no jurisdiction to review the application of nationalisation decrees. The State sold off two of the flats in the building to third parties. The applicant then brought a further action claiming title and the court of first instance again found in her favour in a judgment that became final and unappealable. The building was returned to the applicant, with the exception of the two flats that had been sold off.

The applicant complained, under Article 6 § 1 (right to a fair hearing) of the Convention, of the Supreme Court of Justice's refusal to accept that the domestic courts had jurisdiction to hear a claim to title to land. She also complained that the Supreme Court was not impartial and independent, as it had bowed to "political pressure" from the President of Romania and departed from its case-law. Lastly, the applicant complained under Article 1 of Protocol No. 1 (protection of property) that her right to the peaceful enjoyment of her possessions had been infringed.

Referring to its case-law, the Court found that by setting aside a final judgment, the Supreme Court of Justice had contravened the principle of legal certainty and thereby violated the applicant's right to a fair hearing, within the meaning of Article 6 § 1. It further held that the Supreme Court of Justice's ruling that the courts had no jurisdiction to hear the applicants' claim to title to the land was in itself contrary to the right of access to a court. Consequently, it held unanimously that there had been a violation of Article 6 § 1 under both these heads. In the light of these findings, the Court considered that no separate examination of the

applicant's complaint of a failure to ensure equality of arms in the proceedings in the Supreme Court of Justice was necessary.

As to the allegation that the Supreme Court of Justice was not independent and impartial, the Court noted that, although the Romanian President's statements had undoubtedly been critical of the judiciary, they were addressed primarily to the authorities responsible for executing judicial decisions, not the courts. There was nothing to suggest that they had had any influence on the judges of the Supreme Court who had sat in the applicant's case. Accordingly, the Court held unanimously that there had been no violation of Article 6 of the Convention on that account.

With regard to the complaint under Article 1 of Protocol No. 1, the Court noted that Ms Dickmann's right of property had been established by a final judgment and had therefore been irrevocable. The Supreme Court's judgment had had the effect of depriving her of her property. In those circumstances, the Court found that the fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights had been upset; the applicant had had to bear an individual and excessive burden and, in respect of the part of the property that had not been returned, continued to do so. Consequently, the Court held unanimously that there had been a violation of Article 1 of Protocol No. 1.

Under Article 41 (just satisfaction) of the Convention, the Court held that Romania had to return to Ms Dickmann within three months of the date on which this judgment became final the two flats that had not yet been returned to her. Failing that, the State was to pay her EUR 130,000 for pecuniary damage. The Court also awarded her EUR 8,000 for non-pecuniary damage. (The judgment is available only in French.)

(6) Gabarri Moreno v. Spain (no. 68066/01) ***Violation Article 7 § 1***

Lawfulness of length of imprisonment in view of mitigating circumstance

Juan Gabarri Moreno is a Spanish national who was born in 1954 and lives in Madrid.

On 4 June 1996 he was found guilty of heroin trafficking by the Madrid *Audiencia Provincial* and sentenced to eight years and a day in prison and to a fine. The *Audiencia Provincial* noted that he had been suffering from acute depression for ten years, a mental disorder which it accepted constituted a mitigating circumstance.

The applicant appealed on points of law to the Supreme Court, arguing that the mitigating circumstance had not been taken into account and that he should have received a lesser sentence. In a judgment of 3 June 1997, the Supreme Court dismissed his appeal on the ground that the reduction in sentence he had been given by the *Audiencia Provincial* had not been manifestly disproportionate given the gravity of the offence. The applicant lodged an *amparo* appeal which was dismissed by the Constitutional Court on 21 September 2000.

Having been in custody since 13 May 1995, the applicant was released on licence on 25 July 1999.

The applicant complained, under Article 7 § 1 (no punishment without law) of the Convention, of the domestic courts' refusal to accord him the reduction in sentence prescribed by the criminal law for mitigating circumstances.

The Court noted, firstly, that State Counsel in the Supreme Court had submitted that the applicant ought to have been given a reduction in sentence of at least one degree on the scale of gravity. That submission was confirmed by the relevant domestic case-law and legislation, which showed that the *Audiencia Provincial* should have reduced the sentence by at least one degree.

When the mitigating circumstance was taken into account, the applicant's sentence under Spanish criminal law should have been a term of imprisonment of between six years and a day and eight years. The legal-certainty requirement inherent in the lawfulness principle required the sentence to be rectified, but that was not done. The Court therefore found that Mr Gabarri Moreno had been given a heavier sentence than that carried by the offence of which he had been convicted. It accordingly held unanimously that there had been a violation of Article 7 § 1 of the Convention.

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicant EUR 1,000 for non-pecuniary damage and EUR 3,500 for costs and expenses. (The judgment is available only in French.)

Violation Article 3

(7) Ayşe Tepe v. Turkey (no. 29422/95) ***Violation Article 5 § 3***

Allegation of ill-treatment while in police custody / Unlawfulness and length of detention in police custody

Ayşe Tepe is a Turkish national who was born in 1975.

She asserted that she had been arrested by the police on 9 December 1993 and detained at the headquarters of the Istanbul security police. According to the Turkish authorities, Ms Tepe was arrested on 12 December 1993 during a police operation against a presumed member of the PKK (Workers' Party of Kurdistan) and taken into police custody on the same day. The public prosecutor ordered police custody to be extended until 27 December 1993.

While in police custody the applicant was not assisted by a doctor. A medical examination carried out on her release from police custody by a doctor from the Institute of Forensic Medicine did not reveal any sign of violence. On the same day the applicant was taken before the public prosecutor, who ordered her detention pending trial. The applicant then asserted that she had been ill-treated while in police custody and that her deposition had been written under duress.

On 30 December 1993 and again on 17 January 1994 Ms Tepe underwent two further medical examinations at which she was found to have pains in her shoulders and arms, a loss of feeling in the shoulders, chest pains, pains at her waist and in one leg, and a loss of strength in one leg. At the third examination Ms Tepe was found in addition to have areas of old bruising on her right elbow and left shoulder, a loss of feeling and pins and needles in both arms and pain throughout her body.

In July 1994 the applicant lodged a complaint against the police officers in whose charge she had been detained in which she alleged that she had been forced to sign a statement prepared by the police and that she had been subjected to hanging and electric shocks. The officers concerned were then prosecuted, but acquitted by the Istanbul Assize Court for lack of evidence. Proceedings instituted as a result of another complaint by the applicant, about the length of her detention in police custody, were discontinued.

On 26 November 1996 the applicant was sentenced to imprisonment by the Istanbul National Security Court for membership of an illegal armed organisation.

Relying on Article 3 (prohibition of torture or inhuman or degrading treatment) of the Convention, the applicant maintained that she had been subjected to ill-treatment and even torture while in police custody. She further complained, under Article 5 (right to liberty and security) of the Convention, of the unlawfulness and length of her detention in police custody.

The Court noted that Ms Tepe had not been medically examined at the beginning of her detention and had not had access to a lawyer or doctor of her choice while in police custody. After release from police custody she had had three medical examinations which had resulted in contradictory reports. In the absence of any explanation by the Government for the discrepancies, the Court concluded that the first examination, in which no signs of violence had been found on the applicant's person, could not have been properly performed. Moreover, it had not been asserted by anyone that the signs of violence found on the applicant's body could have predated her arrest.

The Court emphasised that a State is responsible for any person in detention, who is in a vulnerable situation while in the charge of police officers, and that the authorities have a duty to protect such a person. In the present case the Government had not given any explanation of the cause of the marks found on the applicant, who had been held in police custody for 15 days, during which time she had not been allowed to see a lawyer, doctor, relative or friend. The Court also reiterated that the acquittal of police officers suspected of inflicting ill-treatment did not absolve the State of its responsibility under the Convention.

In the light of the above circumstances, and in the absence of a plausible explanation by the Government, the Court considered that the symptoms noted in the second and third medical reports had been the result of treatment for which the Government bore responsibility. It accordingly held unanimously that there had been a violation of Article 3 of the Convention.

As to the complaint of a violation of Article 5 of the Convention, the Court noted that the parties disagreed about the date on which the applicant had been taken into police custody. As there was no evidence in the file capable of corroborating Ms Tepe's allegations, the Court took the view that her deprivation of liberty had lasted 15 days without her being brought before a judge. It noted that her detention had been in conformity with the statutory provisions applicable at the material time. However, referring to its case-law, it held that detention in police custody for a period of 15 days without judicial supervision failed to satisfy the requirements of Article 5 § 3 of the Convention. It accordingly held unanimously that there had been a violation of that provision.

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicant EUR 20,000 for non-pecuniary damage and EUR 1,780 for costs and expenses. (The judgment is available only in French.)

Violation Article 3

(8) Esen v. Turkey (no. 29484/95)
(9) Yaz v. Turkey (no. 29485/95)

Allegation of ill-treatment while in police custody

Esen v. Turkey
Hakime Esen is a Turkish national who was born in 1962.

Suspected of being a member of the PKK (Workers' Party of Kurdistan), she was arrested by the police on 14 December 1993 and taken into police custody at the headquarters of the Istanbul security police. The public prosecutor ordered police custody to be extended until 27 December 1993. On that date she was examined by a doctor, who noted the presence of a bruise 3 cm by 2 cm in area and a small swelling on the right arm near the shoulder. On the same day she was questioned by the public prosecutor and placed in detention pending trial.

On 29 December 1993 and again on 17 January 1994 Mrs Esen underwent two further medical examinations at which she was found to have pains in her neck, back, right shoulder, right arm and ribcage. The doctors' reports also mentioned lesions and bruises on her back and right arm, a marked loss of movement in the right hand, loss of feeling in the right arm and pains on flexion of the hands and wrists.

The applicant was prosecuted for participation in the terrorist activities of the PKK. In July 1994 she lodged a complaint in which she alleged that she had been ill-treated by the police officers in whose charge she had been detained. In July 1995 they were acquitted by the Istanbul Assize Court for lack of evidence.

Yaz v. Turkey
Oya Yaz is a Turkish national who was born in 1969.

Suspected of being a member of the PKK and of lending that organisation aid and assistance, she was arrested on 11 December 1993 and taken into police custody at the headquarters of the Istanbul security police. The public prosecutor ordered police custody to be extended until 27 December 1993. On that date she was examined by a doctor, who found no signs of violence on her person. On the same day she complained to the public prosecutor that she had been ill-treated and that her confessions had been obtained by duress. She was then placed in detention pending trial and transferred to Istanbul remand prison.

On 30 December 1993 and again on 14 January 1994 Ms Yaz underwent two further medical examinations at which she was found to have pains in her shoulders, neck, back and armpits, among other places. The doctors' reports also mentioned oedemata of the thorax and feet, bruising on the soles of the feet, swellings on the arms, hands and legs, and loss of movement of the shoulders and arms in particular.

In July 1994 the applicant lodged a complaint, alleging that she had been ill-treated by the police officers in whose charge she had been detained. They were acquitted by the Istanbul Assize Court in June 1996.

In these two cases the applicants maintained that while in police custody they had suffered treatment contrary to Article 3 (prohibition of torture or inhuman or degrading treatment) of the Convention.

Referring to its case-law, the Court observed that when a person was injured in police custody, while entirely under the control of police officers, it was for the Government to provide a plausible explanation of the origins of the injuries and to produce evidence casting doubt on the victim's allegations, particularly if those allegations were backed up by medical reports.

The Court noted that in both cases it had not been asserted by anyone that the signs of violence found on the applicants' bodies could have predated their arrest. The Government had provided no explanation of the cause of the lesions found on the applicants' persons, whereas Ms Esen had been detained for 12 days and Ms Yaz for 15 days, during which time neither of them had been allowed to see a lawyer. The Court also reiterated that the acquittal of police officers suspected of inflicting ill-treatment did not absolve the State of its responsibility under the Convention.

In the light of the above circumstances, and in the absence of a plausible explanation by the Government, the Court considered that the symptoms noted in the medical reports had been the result of treatment for which the Government bore responsibility. It accordingly held unanimously that in these two cases there had been violations of Article 3 of the Convention.

Under Article 41 (just satisfaction) of the Convention, the Court awarded EUR 17,718 to Ms Esen and EUR 32,000 to Ms Yaz for non-pecuniary damage. It further awarded each of them EUR 2,500 for costs and expenses, less the EUR 616 which the Council of Europe had paid them in legal aid. (The judgments are available only in French.)

(10) Özgür Kılıç v. Turkey (no. 42591/98) ***Friendly settlement***

Allegation of ill-treatment while in police custody

Özgür Kılıç is a Turkish national who was born in 1977 and lives in Izmir. In the course of a criminal investigation he was arrested by the police on 10 January 1997 and taken into custody at the headquarters of the Izmir security police. On the same day a medical examination revealed the existence of two wounds which had already healed on the applicant's arms, but the doctor did not find any sign of violence.

Early in the morning of 17 January 1997 Mr Kılıç was examined by a doctor, whose report did not mention any signs of violence but did record the applicant's statement that he had been the victim of electric shock treatment. Following his medical examination the applicant was placed in detention pending trial and transferred to the Bergama remand prison. Still on 17 January 1997, late in the evening, the applicant was once more examined by a doctor, whose report spoke of various marks on the applicant's body.

Mr Kılıç lodged a complaint, alleging that he had been ill-treated by the police officers in whose custody he had been detained and by the gendarmes who had taken him to Bergama remand prison. The investigation concerning the police officers ended with a ruling that they had no case to answer; the proceedings against the gendarmes are pending before the governor of Izmir province.

Relying on Article 3 (prohibition of torture or inhuman or degrading treatment) of the Convention, the applicant maintained that he had been beaten and subjected to ill-treatment by the police officers in whose custody he had been detained and by the gendarmes who had transferred him to Bergama remand prison.

The case has been struck out following a friendly settlement in which the applicant is to receive EUR 27,000 for damage and for costs and expenses.

Moreover, the Turkish Government have made the following declaration: "The Government of the Republic of Turkey regret the occurrence of individual cases, like this one, of ill-treatment inflicted by the authorities on persons in police custody, notwithstanding the existing Turkish legislation and the Government's determination to prevent such acts. The Government accept that inflicting torture or ill-treatment on prisoners constitutes in particular a violation of Article 3 of the Convention. They undertake to issue the appropriate instructions and to adopt all necessary measures to guarantee that the prohibition of ill-treatment is complied with in future. They refer in that connection to the undertakings they gave in the declaration made with regard to application no. 34382/97 and reiterate their determination to implement them. They further note that the legal and administrative measures recently adopted have made it possible to reduce the incidence of cases of ill-treatment in circumstances similar to those of the present case. ...

The Government consider that supervision by the Committee of Ministers of the Council of Europe of the execution of the Court's judgment in the present case and those given in the similar cases concerning Turkey form an appropriate mechanism for guaranteeing a continual improvement in the situation regarding human rights protection. They undertake in that connection to continue their cooperation, which is necessary to attain that objective." (The judgment is available only in French.)

(11) Sünnetçi v. Turkey (no. 28632/95) ***Friendly settlement***

Allegation of torture while in police custody

Mahmut Sünnetçi, a Turkish national, was born in 1967 and lives in Germany.

On 22 August 1994 he was taken into police custody in Diyarbakır on suspicion of being a member of the PKK (Workers' Party of Kurdistan). On 31 August 1994 he was interrogated by police and confessed to his involvement in the PKK's activities. On 13 September 1994 he was charged with providing explosives to other members of the PKK, establishing its provincial committee and bombing the premises of banks and of a political party. He was acquitted by the Diyarbakır National Security Court on 22 December 1998.

Mr Sünnetçi complained, under Article 3 (prohibition of torture or inhuman or degrading treatment) of the Convention, that he had been tortured while in police custody.

The case has been struck out following a friendly settlement in which the applicant is to receive EUR 25,000 for any damage and for costs and expenses.

Moreover, the Government have also made the following declaration: "The Government regret the occurrence, as in the present case, of individual cases of ill-treatment by the authorities of persons detained notwithstanding existing Turkish legislation and the resolve of the Government to prevent such actions. It is accepted that the recourse to ill-treatment of detainees constitutes a violation of Article 3 of the Convention. The Government undertake to issue appropriate instructions and adopt all necessary measures to ensure that the prohibition of such acts and the obligation to carry out effective investigations are respected in the future. The Government refer in this connection to the commitments which they undertook in the Declaration agreed on in Application no. 34382/97 and reiterate their resolve to give effect to those commitments. They note that new legal and administrative measures have been adopted which have resulted in a reduction in the occurrence of ill-treatment in circumstances similar to those of the instant case as well as more effective investigations. ... (The judgment is available only in English.)

(12) Y.F. v. Turkey (no. 24209/94) ***Violation Article 8***

Forced gynaecological examination

Y.F., a Turkish national, was born in 1951 and lives in Bingöl (Turkey). In October 1993 he and his wife were taken into police custody on suspicion of aiding and abetting the PKK (Workers' Party of Kurdistan). Mrs F was held in police custody for four days. She alleged that she was kept blindfolded and that police officers hit her with truncheons, verbally insulted her and threatened to rape her. On 20 October 1993 she was examined by a doctor and taken to a gynaecologist for a further examination. The police officers remained on the premises while she was examined behind a curtain. On 23 March 1994 the applicant and his wife were acquitted. On 19 December 1995 three police officers were charged with violating Mrs F.'s private life by forcing her to undergo a gynaecological examination. They were acquitted on 16 May 1996.

The applicant alleged that the forced gynaecological examination of his wife had breached Article 8 (right to respect for private life) of the Convention.

The Court reiterated that it was open to the applicant, as a close relative of the victim, to raise a complaint on her behalf, particularly having regard to her vulnerable position in the special circumstances of this case. It considered that, given her vulnerability in the hands of the authorities who had exercised full control over her during her detention, she could not be expected to have put up resistance to the gynaecological examination. There had accordingly been an interference with her right to respect for her private life. The Government had failed to demonstrate the existence of a medical necessity or other circumstances defined by law. While the Court accepted their argument that the medical examination of detainees by a forensic medical doctor could be an important safeguard against false accusations of sexual harassment or ill-treatment, it considered that any interference with a person's physical integrity had to be prescribed by law and required that person's consent. As this had not been the case here, the interference had not been in accordance with the law.

The Court held unanimously that there had been a violation of Article 8 of the Convention and awarded the applicant EUR 4,000 for non-pecuniary damage, to be held for his wife, and EUR 3,000 for costs and expenses. (The judgment is available only in English.)

Violation Article 6 § 1

(13) Edwards and Lewis v. the United Kingdom (nos. 39647/98 and 40461/98)

Non-disclosure of prosecution evidence

Martin John Edwards and Michael Lewis are both British nationals. Mr Edwards was born in 1946 and lives in Woking (Surrey). Mr Lewis was born in 1953 and lives in Tonbridge (Kent).

On 9 August 1994, following a surveillance and undercover operation, Mr Edwards was arrested in a van in the company of an undercover police officer. In the van was a briefcase containing 4.83 kilograms of 50% pure heroin. On 7 April 1995 he was convicted of possessing a Class A drug with intent to supply and sentenced to nine years' imprisonment. He appealed unsuccessfully.

On 25 July 1995 Mr Lewis was arrested by uniformed police officers in the car park of a public house after he had shown two undercover police officers some counterfeit bank notes. More counterfeit notes were found when his house was searched. On 12 November 1996 he pleaded guilty to three charges of possession of counterfeit currency notes with the intention of delivering them to another. He was sentenced to four and a half years' imprisonment.

In both cases an application by the prosecution to withhold material evidence had been granted on the ground that it would not assist the defence and there were genuine public-interest reasons for not disclosing it. The judge had also refused a request to exclude the evidence of the undercover officers.

Both applicants complained, under Article 6 § 1 of the Convention, that they had been deprived of a fair trial because they had been entrapped into committing offences by *agents provocateurs* and the procedure followed by the domestic courts concerning non-disclosure of evidence had been unfair.

The Court reasoned that it was essential for it to examine the procedure whereby the plea of entrapment had been determined in each case, so as to ensure that the rights of the defence had been adequately protected. In the present case the undisclosed evidence had related, or might have related, to a question of fact decided by the trial judge (namely whether the applicants had indeed been entrapped into committing the offences in question). Had the defence been able to persuade the judge that the police had acted improperly, the prosecution would in effect have had to be discontinued. The prosecution's applications to withhold the evidence had thus been of determinative importance to the applicants' trials. Despite that, the applicants had been denied access to the evidence and their lawyers had been unable to argue the case for entrapment in full before the judge. Moreover, the judges who had rejected the defence submissions on entrapment had already seen prosecution evidence that might have been relevant to that issue.

In those circumstances, the procedure followed to determine the issues of disclosure of evidence and entrapment had not complied with the requirements to provide adversarial

proceedings and equality of arms and had not incorporated adequate safeguards to protect the interests of the accused. The Court held unanimously that there had been a violation of Article 6 § 1 of the Convention and that the finding of a violation constituted in itself just satisfaction for any non-pecuniary damage sustained. It awarded each applicant EUR 22,000 for costs and expenses. (The judgment is available only in English.)

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These summaries by the Registry do not bind the Court. The full texts of the Court's judgments are accessible on its Internet site (http://www.echr.coe.int).

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The European Court of Human Rights *was set up in Strasbourg in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights. On 1 November 1998 a full-time Court was established, replacing the original two-tier system of a part-time Commission and Court.*