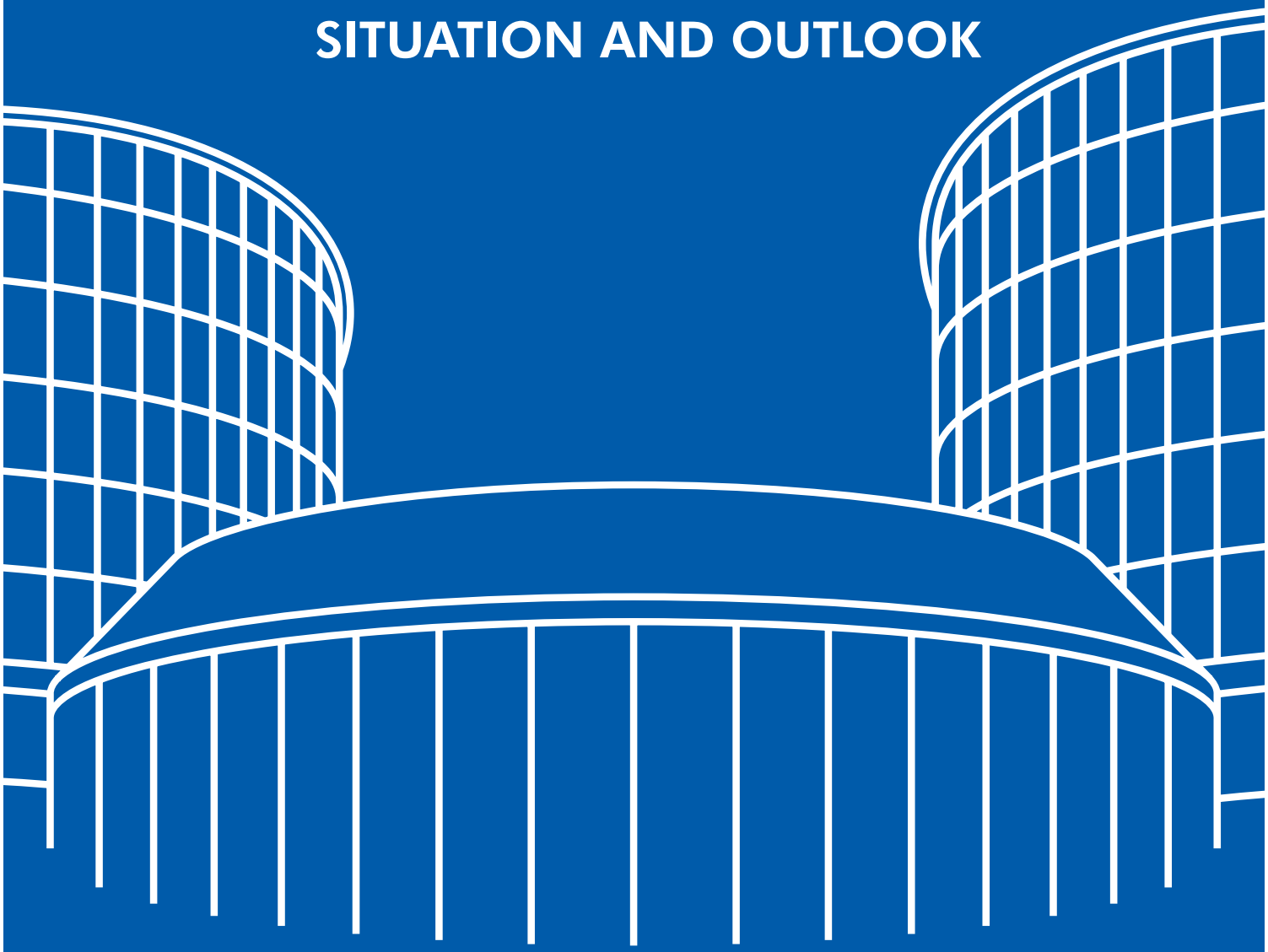
EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

TEN YEARS OF THE "NEW" EUROPEAN COURT OF HUMAN RIGHTS 1998-2008 SITUATION AND OUTLOOK



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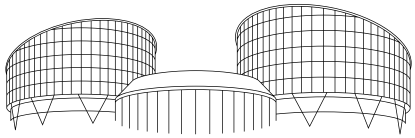

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TEN YEARS OF THE "NEW" EUROPEAN COURT OF HUMAN RIGHTS 1998-2008 SITUATION AND OUTLOOK

Proceedings of the Seminar
13 October 2008
Strasbourg

French Edition: *Dix ans de la « nouvelle » Cour européenne des droits de l'homme 1998-2008 – Bilan et perspectives*

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Mr Jean-Paul Costa
President of the European Court of Human Rights

On 13 October 2008 a seminar entitled "Ten years of the 'new' European Court of Human Rights – Situation and outlook" was held at the Court to celebrate the 10th anniversary of the entry into force of Protocol No. 11 and the inception of the single permanent Court. It provided an opportunity to bring together a large number of judges and former judges of the Court, legal practitioners, academics and NGO representatives for discussions on the evolution of the right of individual petition and of European human-rights case-law.

The debates held during the day were rich and fruitful and can still be viewed in full on the Court's Internet site.

I am pleased that the main contributions to the seminar have now also been put together in a publication, produced with impressive speed.

This publication is especially enriched by the personal testimonies of those who played a major role within the Court, the European Commission of Human Rights and the Council of Europe in the drafting of Protocol No. 11 and the setting up of the new Court. By bringing their contributions together in this form, we wish to pay tribute and express our gratitude to them.

Proceedings of the Seminar

II - SEMINAR

OPENING SPEECH

Mr Jean-Paul Costa
President of the European Court of Human Rights

Madam Deputy Secretary General,
Ladies and gentlemen,
Dear friends, dear former President Bernhardt, dear former fellow judges,

There is a sense of satisfaction for all those who feel strongly about respect for human rights in being able to celebrate three anniversaries over the coming months: the 60th anniversary of the Universal Declaration, a founding text to which a colloquy will be devoted in this very place on 8 and 9 December; then the 50th anniversary of the Court, which will be the subject of numerous events throughout 2009; and lastly, the 10th anniversary of what we have come to call the "new European Court of Human Rights", brought into existence by the entry into force of Protocol 11, which we are celebrating here today. Anniversaries should not focus on the past alone. They should also be an occasion for looking at the future and the subject of the anniversary should not only have a long life, but if possible a better one.

How are these three events inter-connected?

With regard to the Universal Declaration of Human Rights of 1948, it potentially affects the entire world and it plays a political and moral role which give it particularly eminent status. Without it, nothing would have been possible. The Declaration was one of the first key instruments of the United Nations, adopted three years after that organisation's inception, and in a way it has engendered most of the other international instruments of human rights protection.

As for our Court, its jurisdiction is both regional and more limited *ratione materiae*, since the European Convention on Human Rights does not cover economic and social rights. However, the legally binding force of the Convention gives it considerable importance, both in terms of its influence on domestic laws and the binding force of the Court's judgments.

Lastly, Protocol 11 has brought about a simplification of the supervision machinery by doing away with the European Commission of Human Rights, changing the role

of the Committee of Ministers and turning the Court into a single and permanent court. It has radically transformed the system. The celebrations must involve an assessment of the past in order to apprehend the future. There have been both very positive aspects to the past ten years and less positive ones. I shall refer to these in turn before going on to consider the future outlook.

The very positive aspects

The establishment of the right of individual petition and the – at last – compulsory nature of the Court's jurisdiction indisputably rank among the benefits of the reform. The fact that the mechanism is now purely judicial in nature is an undeniable improvement on the former system. The right of individual petition and the compulsory jurisdiction of the Court no longer depend on decisions of the States; they have existed *de plano* since the Eleventh Protocol came into force and, in respect of the States that ratified the Convention subsequently, since ratification.

At the same time the number of judgments and decisions delivered by the Court has substantially increased. I shall confine myself to reiterating that there were 7,771 applications pending on 31 December 1998 and that there are approximately 95,000 cases pending now (twelve times more in ten years).

Whilst the "former" Court delivered 837 judgments in nearly forty years of existence, the Court has recently delivered its ten-thousandth judgment since it was created, and delivered more than 1,500 last year, in 2007. This huge quantitative increase has not adversely affected the quality of the Court's judgments, as can be seen from the judgments and decisions of the Grand Chamber, and also the many leading judgments delivered by the Chambers constituted within the four, and later five, Sections of the Court.

We have endeavoured – successfully, in my opinion – to maintain a consistent line of case-law, which has been particularly difficult given that the number of decisions delivered is incomparably higher than during the preceding period. Our Court has risen to the challenge and given rulings in new areas such as, for example, bioethics, education and the environment. It has affirmed its case-law in the area of protection of the rights of aliens, including in the context of the (legitimate) fight against terrorism. It has also had call to examine new social issues, for example in matters of sex. It has reinforced case-law developments begun earlier: positive obligations of States, the horizontal effect of the Convention, and an evolutive interpretation of the safeguards guaranteed. Our societies evolve and new issues arise. The striking diversity in subject-matter of the cases we deal with show that, increasingly, litigants are turning to the Court and often consider it as an European Constitutional Court, although there is of course no European Constitution. We have also strengthened our links with other international courts, which is essential if we want to maintain converging case-law and avoid conflicts or contradictions.

I am thinking of the International Court of Justice and the Court of Justice of the European Communities, but I should not forget the other regional human rights courts or international criminal courts. The various national and international courts now refer to each other's case-law in their judgments. This is evidence of the internationalisation of law, particularly in a sphere such as rights and liberties which, *par excellence*, transcends frontiers. This has only been possible thanks to the considerable work accomplished by the judges and by the members of the Registry who have all worked tirelessly to ensure that the system works effectively. I take this opportunity to thank them for their efforts.

Another source of satisfaction lies in the fact that the Convention is being better and better implemented in the domestic courts, in particular by the Supreme and Constitutional Courts. This is a good application of the principle of subsidiarity, which is absolutely vital. The legislatures in the various countries are adopting the same approach, for example by putting in place domestic remedies that have to be exhausted, failing which the application lodged in Strasbourg will be declared inadmissible, or by translating the consequences to be drawn from our judgments into appropriate laws or regulations and enacting these speedily. All my contacts show me that there is an awareness among Governments, Parliaments and courts alike of the need for States to prevent human rights violations, and to remedy them when prevention has not been possible. The Convention is becoming a reference text, and the Court, whose mission is to ensure compliance with the undertakings given by the States Parties, is a spearhead for the promotion of rights and liberties. All these improvements should not, however, mask certain less favourable aspects of the recent developments.

The less favourable aspects

I now need to talk about the bottleneck at the Court and how this means that it now takes too long to deliver its decisions. To cite just a few figures, in 2007 the number of cases allocated to a judicial body stood at 41,700, and the number of applications disposed of at 28,792, leaving a deficit of almost thirteen thousand; in the first nine months of 2008 the number of cases allocated to a judicial body stood at 37,550, which is a not inconsiderable increase, and the number of applications disposed of at 22,073, leaving a deficit of over fifteen thousand. In addition to that, the large number of applications brought about by the events in the Caucasus is going to further increase our workload. The reasons for this bottleneck are well known: the Council of Europe, which comprised 23 members in 1990, when the first central European State, Hungary, joined, now comprises 47. Any new member State of the Council of Europe must, moreover, now sign the Convention on the date of its accession and ratify it within a short time, generally one year. Furthermore, certain new member States are high case-count countries since almost half the total number of applications originate from three of them

(the Russian Federation, Romania and Ukraine). This percentage rises to 56% if we add Turkey.

Another explanation, though, for the bottleneck at the Court, which causes regrettable delays, is a twofold problem concerning the type of application. Some applicants, usually through ignorance of the Convention and the role of the Court, lodge applications that have no prospect of success, but still have to be examined. The Court also has to deal with many repetitive cases, which, while being well-founded, ought really to be dealt with at national level, once the jurisprudential principles have been well established in Strasbourg. The States bear some responsibility for this for failing to implement the necessary reforms at domestic level or failing to implement them rapidly. Two examples of problems which ought to be solved at national level are the excessive length of proceedings and the failure to enforce judgments rendered by national courts. Some observers also regret the fact that the Convention is not of *erga omnes* effect, which would facilitate matters by compelling States to modify their legislation, and courts their case-law, following a judgment delivered by the Court against another State. I should add, however, that increasingly – I am happy to relate – the national authorities and courts are taking lessons from case-law that does not concern them specifically, which is a move towards an *erga omnes* effect.

Shortly after the entry into force of Protocol 11, it became clear that the system was going to suffer prejudicial delays. Protocol 14, which was drawn up by all the member States, is designed to help the Court to function more effectively. It was opened for signature in the spring of 2004 and signed by all the States Parties to the Convention, but we are still missing one ratification – and have been for two years – before the Protocol can come into force: that of the Russian Federation. At the same time, Lord Woolf of Barnes was asked to perform a review of the working methods, and a number of measures recommended in his report have already been adopted. Above all, the Heads of State and Government of the Member States of the Council of Europe, meeting in Warsaw in 2005, decided to set up a Group of Wise Persons to consider the effectiveness of the control mechanism of the European Convention on Human Rights. The report drafted by the group under the chairmanship of Mr Gil Carlos Rodríguez Iglesias contains proposals for the long-term effectiveness of the Convention system, but, without the entry into force of Protocol 14, it can barely even be taken into consideration because the entry into force of Protocol 14 is supposed to be the starting point. Faced with this situation, how should we be envisaging the future? This is the third and final topic of my speech today.

The future

The right of individual petition, directly before the Court, which is a key feature of the European system, a victory slowly won, and one that is unique in the world, is

an undeniable achievement hailed by all. However, it has to go hand in hand with the speedy and effective processing of applications. How can one not raise the question of the Court's need for greater autonomy of management and funding, which would provide increased effectiveness? Lastly, bearing in mind the growth of the Court Registry, it is clear that its human resources cannot be increased indefinitely and that a plethora of Registry staff would cease to be manageable. Reforms are therefore essential.

I have already said that the principles of subsidiarity and solidarity between national systems and European supervision appear to me to be necessary to reduce the inflow of cases, or in any event of unmeritorious ones. We need to go further, such as by providing for still more domestic remedies, on condition of course that these remedies are effective and result in full and adequate redress. The colloquy in Stockholm in June 2008, organised by the Swedish Chairmanship of the Committee of Ministers of the Council of Europe, entitled "Towards stronger implementation of the Convention at national level" should bear precious fruits.

Pilot judgments are also still not being used often enough, but are a source of hope and should be developed. We should probably also consider "class actions" or, more specifically, collective applications and the manner of dealing with these effectively.

I observe on my official journeys, or when leading public figures visit the Court, that the authority, influence and prestige of our Court are intact. I also know that, despite the difficulties, its influence contributes to the increased protection, in the various countries, of the rights laid down in the Convention.

In order that the Court's future prospects may be commensurate with its achievements to date, we all need to reflect on the future, and pray for a new lease of life. This is not easy. The very high number of applications, which are not all – far from it – ill-founded, reveals both that human rights protection calls for constant vigilance and that some 800 million Europeans trust our Court to provide it. I am not pessimistic about the future. Provided, of course, that the determination is there – the determination of the States, but also of civil society – human rights will not decline in the 21st century. On the contrary, they should progress.

Thank you.

10th ANNIVERSARY OF PROTOCOL No. 11

Mrs Maud de Boer-Buquicchio
Deputy Secretary General of the Council of Europe

Today we are celebrating the 10th anniversary of the entry into force of Protocol 11, which brought into existence a "single" European Court of Human Rights. For quite some time, when we talked about the Court, we always referred to it as the "new" Court. This qualification has now been dropped, which suggests a passage from childhood to adulthood, or at least to adolescence. Of course, links with its predecessors are not totally severed: the new Court had a mother and a father: the Commission and the old Court. Its case-law and procedures today very much bear the genes of its parents.

The Court was officially established on 1 November 1998, but allow me to share with you some personal memories from the months which preceded its official establishment. During the spring and summer of that year, we had been meeting informally under the able chairmanship of Judge Elisabeth Palm, together with other judges-elect and staff of both existing Convention organs in order to draft the Court's Rules of Procedure. We were under considerable time pressure, as we had to be ready on 1 November, when the Court would have to endorse this set of rules. I remember our, often very animated, debates, bringing together very different experiences and approaches. After all, the role of the Commission in establishing the facts and the judicial tasks of the old Court had to be merged into one set of rules. Many important issues of principle were discussed: registration policy; the composition of the Chambers; confidentiality versus the public nature of the proceedings; the use of languages; the role of the Court in negotiating friendly settlements; interim measures; the role of Rapporteurs; the organisation of the Registry; the role of staff; and many more not only legal but also organisational issues. The end result was, in my view, an excellent text, which of course was subject to review once the Court became operational and gained experience.

In 1998 I was elected Deputy Registrar, and taking my oath was a moment of great emotion. I served the Court for four years after that, until 2002. I have to admit that life was not always easy. Resolution H 97 (9) on the status and conditions of service of judges of the European Court of Human Rights left many questions unanswered, some of which are still with us today. We had to look for imaginative and innovative solutions to many and varied problems. It was not always easy to find the right balance between the needs for administrative autonomy expressed by the judges and the concern to maintain a coherent approach to the administration of the Council of Europe as a whole.

And then, in September 2002, I moved across the river. Let me dwell on this for a moment. It is true that there is water between the European Court of Human Rights and the Council of Europe headquarters, but the bridge between them over the canal symbolises the link between us. It also shows our complementarity. I will give you two examples which are dear to my heart: first, the rights based approach to children developed by the Court, based on their best interest, which underlies the three-year programme "Building a Europe for and with children" developed by the Council of Europe. In this respect I would like to express my particular satisfaction that following an exchange I had with President Costa, the Court will consider accelerating the procedure involving children's rights. Second, issues related to violence against women. On the same day that the Court was holding a hearing on repeated violence, threats and injury to which a woman had been subjected, the Committee of Ministers was having an exchange of views on the drafting of a Convention on violence against women.

The bridge is named "The White Rose" after a group of German students who resisted the Nazi regime. Several members, including the group's two founders: brother and sister Hans and Sophie Scholl, paid for their commitment to the values of humanity with their lives. They died in the pursuit of freedom which our Organisation was set up to protect and expand. I wanted to mention Hans and Sophie and their courageous friends, not because of the geographical vicinity of the bridge but to remind us of what our work is all about. I am hard pressed to find a more responsible and more noble task. I believe that the people working in and with this Organisation have been handling this responsibility with great distinction.

It is often said that the Court is "a victim of its own success". I disagree. What the Court is facing is the fact that human rights across Europe continue to be violated, and people continue to look to this Court for remedy. The challenge of the backlog aside, the Court is not a "victim", far from it. If anything, it is a beacon of hope and a symbol of justice for millions of Europeans. We all have the obligation to meet these hopes, and we all have reason to be proud of our Court.

INTRODUCTION TO THE SEMINAR

Mrs Françoise Tulkens
Judge at the European Court of Human Rights elected in respect of Belgium, President of the Second Section

Dear colleagues, dear friends,

1998-2008: in a few days the "new" European Court of Human Rights will be ten years old. The age of reason perhaps, or the age of choices, of turbulence? We shall see in a moment. But before that I wish to welcome and thank the essential architects of Protocol No. 11 who are with us this afternoon. I am thinking particularly of Maud de Boer-Buquicchio, Hans Christian Krüger, Jens Meyer-Ladewig and Andrew Drzemczewski. I am also glad to see here in such numbers judges of the old and the new Court whose term of office has now ended: President Bernhardt, Benedetto Conforti, Rıza Türmen, John Hedigan, Wilhelmina Thomassen, Margarita Tsatsa-Nikolovska, Kristaq Traja. You were pioneers and the Court owes you a great deal. Thank you very much for being with us today.

On celebrating the 10th anniversary of the entry into force of Protocol No. 11, we thought it important to recapitulate the fundamental advances made at that time: firstly, the introduction of a protection mechanism of an entirely judicial character; secondly, direct access by the applicant to international judicial review. Today individuals have become subjects of international law and the European Court of Human Rights, now permanent, is the illustration of that paradigm shift. It was therefore logical and normal that we should give the floor today to the applicants' representatives, to the lawyers and non-governmental organisations who contribute to the Court's work and defend before it the rights and freedoms of the persons concerned. The aim of this afternoon's seminar is to start a debate with you and with the judges of the Court and the members of its Registry, whose immense competence I wish to stress and who play an essential role in the Court's work. And we have invited academics to help us, perhaps not to find solutions but at least to ask the right questions. We wanted our exchanges to produce an uncompromising situation report on the Court's activity during these ten years to focus our attention constructively on the challenges to come. The Convention is "our common heritage".

As you can see from the programme, the presentations and discussions are centred on two main themes: development of the right of individual application and development of European human rights case-law. The right of individual application, as provided for in Articles 34 and 35 of the European Convention

on Human Rights, has now won a fixed place in the European system of human rights protection. But, like all past achievements which have become permanent, it must be constantly reanalysed, seriously and calmly. Like the Wise Persons, we can say: "The right of individual application is today both an essential part of the system and a basic feature of European legal culture in the field [of fundamental rights]." The first session of the seminar will tackle various questions linked to the exercise of the right of individual application, as perceived by practitioners. In this respect, we have flagged certain problematic questions such as the form in which applications are declared inadmissible and management of the process, the simplified procedure and pilot judgments. How might this last technique affect individual applications? Regarding the Grand Chamber, what role can applicants' representatives play in the procedure and how are the decisions of the panel of the Grand Chamber perceived by you? But there will no doubt be other questions raised by our rapporteur and by all of you during the discussion.

The second session will deal with the substance of the rights guaranteed and the development of human rights protection over the last ten years. In one of its first judgments the "new" Court was determined to send out a strong message when it said: "(...) The increasingly high standard being required in the area of the protection of human rights and fundamental liberties correspondingly and inevitably requires greater firmness in assessing breaches of the fundamental values of democratic societies"[1].

During these ten years the Court has had to deal with difficult questions which are quite simply social issues: discrimination of various kinds, the situation of aliens and minorities, the beginning and the end of life, terrorism and the intensification of the terrorist threat. Has the Court successfully met the challenge of guaranteeing in the last resort the protection of human rights on the European continent? What are the major achievements of its case-law? What are the main difficulties? All these questions and more will be debated in a moment. As regards method, we have asked each of our rapporteurs to achieve the exploit of keeping their contribution down to twenty minutes in order to leave plenty of time for debate and discussion. Thank you all for attempting that impossible exercise. And thank you also above all for contributing your competence and your talent. I would also like to thank in advance Constance Grewe, who will be suggesting some conclusions from our discussions "on the spot" and "without a safety net".

As you are well aware, nothing gets done by itself. I would therefore like to extend my warm thanks to the members of the organising committee who launched this initiative and who have accompanied it with their enthusiasm and their creativity: Egbert Myjer, Sverre Erik Jebens and Isabelle Berro-Lefèvre, judges; Roderick Liddell, Patrick Titiun, Leif Berg, Mario Oetheimer, Stéphanie Klein,

1. *Selmouni v. France* [GC], no. 25803/94, § 101 *in fine*, ECHR 1999-V.

Valérie Schwartz, Sylvie Ruffenach and Delphine De Angelis, members of the Court's registry. This marvellous team has in fact an important task because, after the new Court's 10th anniversary, we will be celebrating in January 2009 the 50th anniversary of the Court itself and on 4 November 2010 the 60th anniversary of the Convention. So now you know the dates of our forthcoming meetings.

PRESENTATION OF SYLVIE SAROLÉA

Mrs Isabelle Berro-Lefèvre
Judge at the European Court of Human Rights elected in respect of Monaco

I have pleasure in introducing Mrs Sylvie Saroléa, who will be the first of our guests to take the floor.

Mrs Saroléa is a lawyer in Belgium and a lecturer at Louvain University. As a woman of commitment and conviction, she is very involved, particularly through various associations, in the field of immigration and legislation relating to aliens. Today, moreover, she will be speaking in her capacity as an active member of the Human Rights League.

Sylvie Saroléa has written a number of books on the right of asylum and has regularly defended the cause of asylum seekers before the courts. This combination of militant, practical and academic activities makes Sylvie Saroléa an ideal person to provide us with an overview of the evolution of the right of individual petition since Protocol No. 11 came into force. While it may not be significant for the general public, this overview of 10 years of the "new" Court is of the utmost importance for applicants and for all those who, like yourselves, assist and represent them.

You have chosen to approach the subject from the angle of a critical view of direct access to the single Court. It is therefore with much interest that we are now going to listen to you, Mrs Saroléa.

A CRITICAL LOOK AT DIRECT ACCESS TO THE SINGLE COURT: A PRACTITIONER'S PERSPECTIVE

Mrs Sylvie Saroléa
Lawyer of the Nivelles Bar (Belgium),
Lecturer at the Catholic University of Louvain,
Member of the Human Rights League, and
President of the Association for the Rights of Foreigners

I must begin by expressing my gratitude for this excellent seminar. I am both surprised and honoured to be invited to present, not the opinion of practitioners, but an opinion by one practitioner, on the right of individual petition. This opinion is my own, not that of the Court, and it is a hesitant one, in that it raises more questions than it answers. This seminar to mark the 10th anniversary of Protocol No. 11 gave me an opportunity to think about your institution, the European Court of Human Rights, which fascinates me – as it does the majority of us in this room.

It was an opportunity to move from the viewpoint of an admirer to that of a user. An admirer, since for any lawyer or defender of human rights, the fact of absorbing oneself in the Court's case-law or considering an application to Strasbourg (irrespective of whether that option is ultimately used or merely envisaged) is a potential haven. I find myself in a situation similar to that of an exile who finally hears someone speaking his or her language in a hostile environment – or who at least hopes to hear it. In this respect, the relationship with the Court is as much emotional as rational, and our expectations of it are occasionally exaggerated out of all proportion. When a case is scheduled for a public hearing, it is a source of singular expectations, encouragement and hope; the same frenzy accompanies the reading of the long-awaited judgment itself, which will either delight or disappoint. However, as the invitation stated that this overview should be a critical one, I will now allow the head, rather than the heart, to speak.

The right of individual application: from principle to practice

The right of individual petition is essential as a matter of principle. It symbolises the recognition of the individual, no longer merely as an object, but as a subject of international law. When the President of the Inter-American Court of Human Rights argued in San José for a reform similar to that brought about by Protocol No. 11, he emphasised that "individual petitioners would thus act as genuine subjects of human rights international law, once their full procedural capacity is

recognised"[1]. He stated that direct access was alone capable of guaranteeing procedural equality between the parties and respect for "the adversarial principle between the victims of violations and the States presumed to be responsible".

The right of individual petition is also a precondition for the effectiveness of rights where other means of protecting them have failed or have proved ineffective. However, we should be under no illusions: the right of individual petition is a necessary yet inadequate precondition for the effectiveness of the guarantee of human rights. Your Court has held, especially in the exemplary case of *Airey v. Ireland*[2], that access to a court must be not only theoretical and recognised in principle. It must also be genuinely open to everyone, and therefore attention must be paid to the material conditions allowing this right to be exercised. "Hindrance in fact can contravene the Convention just like a legal impediment."[3]

It is not enough to assert the principle that any individual may lodge an application with the European Court of Human Rights. There must also be a solid legal culture of human rights in the member States. There is still much to be done to ensure that lawyers, other legal practitioners, the domestic courts, civil society, law students, associations, etc, are trained in and curious about the protection that the European Convention on Human Rights can offer individuals. Few lawyers and judges know and use the lessons of the Court's case-law. Frequently, only a few older judgments are known, masking the case-law's wealth. The principle of subsidiarity, which provides that the Convention be primarily implemented in the domestic legal systems, is more frequently reflected in the States' reliance on the margin of appreciation, which – they claim – permits them to restrict a protected right, than in a domestic court's reference to the Convention. Rarer still are those who consider that a teleological interpretation of the text can occur outside the circle of the Court and without waiting for the latter to take a stance.

At the same time, greater solidarity must be developed with the most weak, those for whom the right of individual petition is extremely difficult to exercise. I am thinking especially of situations where the risk of breaches of human rights concerns mass violations, as in the countries in the south of our continent, where thousands of foreigners disembark in search of a better future. Detention and the issue of effective access to the protection mechanisms for refugees affect them too. I am also thinking of disturbing situations such as those in the Caucasus. For the most vulnerable, such as minors, homeless persons, illegal immigrants or those in a precarious situation, and the most downtrodden minorities, access to a lawyer is in itself problematic, and application to a court even more so.

1. A. A. CANÇADO TRINDADE, "The Inter-American Court of Human Rights at the dawn of the 21st century", Actualité et Droit International, February 2000 (www.ridi.org/adi); *ibid*, "Le nouveau règlement de la Cour interaméricaine des droits de l'homme", *in: Libertés, justice, tolérance. Mélanges en hommage au Doyen Gérard Cohen-Jonathan*, Brussels, Bruylant, 2004, p. 351.
2. *Airey v. Ireland*, 9 October 1979, Series A no. 32.
3. *Ibid*., §§ 25 et seq.

In those circumstances, an application to Strasbourg is almost illusory, even if Protocol No. 11 makes it theoretically possible for everyone.

We are not equal before the right of individual petition. Across and beyond national borders, human rights defenders must show solidarity so that the weakest victims can enjoy the possibility to exercise this right of appeal. The effectiveness of individual applications also presupposes that they are useful, both in quantitative and qualitative terms. A way must be found to manage the flow of applications. There is no need to refer again to the endless statistics concerning the applications that your Court must deal with, imposing on it a massive workload. In terms of quantity, the Court's workload results in judgments that are all too frequently delivered in time-limits that largely reduce the proceedings to matters of just satisfaction. This is certainly not the added value of an international court such as the European Court of Human Rights. Where too many applications have to be dealt with but the cause is a noble one, emphasis must be placed on "quality". As Mr Terry Davis, Secretary General of the Council of Europe, has rightly pointed out in the context of discussions on reform of the procedures, the latter's purpose must be the protection of human rights, not protection of the Court vis-à-vis individual applications. In the future a case before the Court should teach us more than it does at present. The number of case files should perhaps be decreased, but more lessons should be developed in the case-law. An application to the European Court of Human Rights entails a very cumbersome process. The energy which that implies must be exploited to the utmost.

I should like to raise a few lines of enquiry, which are also opportunities to reflect on the issues which preoccupy us. I have selected three. The first concerns the admissibility filter. Is it not time to raise the issue of this filter's legitimacy, and its usefulness? Formal aspects aside, does the "admissibility and merits" distinction have a meaning? Is it useful in terms of the objective pursued, namely the effective and rapid protection of human rights? The second focuses on the long-standing debate concerning access to the Court by non-governmental organisations. Given that there are thousands of case-files, should we not dare to envisage collective applications (class actions) as a means of creating synergies? The last point concerns the lessons to be gleaned from the judgments. With regard to the scope and content of the judgments, should the case-law not lose its casuist aspect, in which principles are sometimes lost sight of when the facts are set out in too restricted a form? A clear case-law is needed, one that dares to speak its mind. This means daring to set out the principles but also to be clear about any changes in the case-law.

A. Admissibility

The purpose of the admissibility filter must be to explain, to move things forward, to streamline, but this can only be done effectively in a context of legibility and

transparency. The procedure as it currently stands provides for a dual examination of admissibility:
– the first is a filter that is allegedly a formal one. A three-judge committee may declare an application inadmissible on grounds that are essentially formal;
– the second filter is that of Article 28 of the Convention, which enables the Court to decide to rule on a file at the admissibility stage if examination of the question raised does not require further examination.

The first filter leads the three-judge committees to issue decisions which are only a few lines long and inform the applicant either that his or her application is inadmissible for formal reasons, or that it is inadmissible as being manifestly ill-founded. This filter was put in place when Protocol No. 11 was adopted. At the time, the writers who commented on the entry into force of Protocol No. 11 certainly did not imagine that the responses given to applicants at this stage would be set out in a few lines and would provide no opportunity to understand the reasons behind the declaration of inadmissibility. More substantial exchanges between the Court and the applicant were envisaged, particularly in the event of doubts as to compliance with the criteria set out in Article 35. The possibility of correcting an application that had been inadequately argued or misunderstood was also raised[4]. Johan Callewaert indicated that this filter would serve to identify "flagrant instances of inadmissibility"[5]. At present, however, there is no dialogue between the Court and the applicant at the level of this first admissibility filter. It is impossible for the practitioner to decipher the analysis of the three-judge committees, and the reason for dismissing the application out of hand is far from clear. Sometimes the case seems meaningful and the issue important, and serious questions of law are raised. To respond to such applications with stereotyped and thus opaque reasoning cannot be considered satisfactory.

A filter is of no value if it is not instructive and informative, and if it is not an opportunity for dialogue between the applicants and the Court. Although at first sight this filter enables the Court to save time by processing certain files rapidly, in the medium term it wastes an enormous amount of time. In reality, since applicants cannot understand the Court's reasoning, they bring new applications in an attempt to grasp the criteria used. Where justice is dispensed on the merits, and this is the case where a "manifestly ill-founded" case is dismissed, then it must be done in a clear manner, for reasons of both pedagogy and transparency. To use a metaphor that is perhaps simplistic, it may be useful in the short term to lose one's temper with a child, without explaining the reason for our anger. This is effective in the short term, in that he or she will disappear into the bedroom.

4. Ch. PETTITI, "The form and content of the application", *La procédure devant la nouvelle Cour européenne des droits de l'homme après le Protocole n° 11*, Brussels, Bruylant, p. 31.
5. J. CALLEWAERT, "The European Court of Human Rights one year after Protocol No. 11", J.T.D.E., 1999, pp. 201 et seq.

It is highly ineffective in the medium term, since he or she will get up to the same mischief again, or do something even worse.

In addition to this essential pedagogical aspect, the Court cannot dispense with adequate reasoning on the form and the merits, given that it points to the transparency of justice as one of the fundamental elements of a fair procedure. Its own credibility is at stake, given that it requires national courts to deliver clearly reasoned decisions. The wealth of a democratic and fair court system lies in the reasoning given for the decisions reached.

The second filter is based on Article 28, which allows an unfavourable decision to be taken on an application if it does not require further examination. Its usefulness is questionable, for the following reasons.

Firstly, the Court's lessons are highly likely to go unnoticed at this stage. Two cases illustrate this concern. In the case of *Čonka v. Belgium*, the Court held that Article 13 of the Convention, taken in conjunction with Article 4 of Protocol No. 4, required that a remedy with suspensive effect be made available to foreigners threatened with expulsion. This case-law was considered well-established[6]. Four years later, in its decision on admissibility in the case of *Riad and Idiab v. Belgium*[7], the Court reconsidered its stance. This reversal of the case-law went totally unnoticed, in so far as it did not appear in the judgment on the merits . The brief reasoning in the admissibility decision did not make it clear why the lessons of the Čonka judgment had suddenly been set aside. The facts were nonetheless similar. An appeal to the *Conseil d'Etat* was still pending at the date of repatriation. At the same time, it is clear that at the admissibility stage the distinction between the admissibility and the merits is a particularly fine one. The Court must frequently join to the merits

6. *Čonka v. Belgium*, no. 51564/99, § 79, ECHR 2002-I : "The Court considers that the notion of an effective remedy under Article 13 requires that the remedy may prevent the execution of measures that are contrary to the Convention and whose effects are potentially irreversible ... Consequently, it is inconsistent with Article 13 for such measures to be executed before the national authorities have examined whether they are compatible with the Convention, although Contracting States are afforded some discretion as to the manner in which they conform to their obligations under this provision ...".
7. *Riad and Idiab v. Belgium* (dec.), nos. 29787/03 and 29810/03, 21 September 2006 : "The applicants were also of the opinion that the fact of repatriating them, when the appeal before the *Conseil d'Etat* and the requests filed on the basis of section 9 (3) of the Law of 15 December 1980 were still pending, had violated Article 13 of the Convention, read in conjunction with Article 3... The Court notes that the decisions to refuse the applicants' requests for political asylum, alleging the existence of dangers to their person in Lebanon, were the subject of an appeal to the Commissioner-General for Refugees and Stateless Persons. The latter did indeed examine the appeals in the course of adversarial proceedings and weighed up their arguments and submissions. His decisions, taken before the repatriation, contained extensive reasoning based on both factual and legal considerations. The Court notes that, under Belgian law, the Commissioner-General's Office is undoubtedly a body whose powers, and the guarantees provided by it, ensure the effectiveness of appeals by asylum-seekers under Article 3 of the Convention. Indeed, the applicants do not contest the effectiveness of this remedy. In those circumstances, the applicants cannot complain of a breach of Article 13 of the Convention. It follows that this complaint is manifestly–ill-founded and must be rejected in application of Article 35 §§ 3 and 4 of the Convention."

questions concerning the exhaustion of domestic remedies. After many years the Belgian experience of the asylum procedure has shown that, setting aside formal issues, the distinction between admissibility and the merits is an illusion. How can one distinguish between the well-foundedness of ill-founded and … manifestly ill-founded? While one can understand that an application is declared inadmissible for formal reasons, in that it was lodged anonymously, after the deadline, or even by a domestic pet, the procedure of an admissibility filter is inappropriate for anything that concerns the essence of a complaint. The adverb "manifestly" is extremely difficult to wield in legal terms. All too frequently, it is synonymous with a lottery and thus incompatible with the ideal of justice that a court such as the European Court of Human Rights must pursue.

B. Collective action

When the Court is faced with a significant number of applications, they must undoubtedly be channelled in such a way that the Court can survive, but should thought not also be given to bringing these forces together? The Court has to date rejected collective action, sometimes described as class actions or *actio popularis*, that is, applications lodged by a non-governmental organisation for the purpose of pursuing its social objective. Admittedly, three alternative methods are available to non-governmental organisations that wish to intervene before the Court.

Firstly, they may intervene in support of significant issues, which is particularly important in cases where there have been numerous instances of the acts giving rise to allegations of human rights violations. NGOs also provide useful information to applicants. Finally, they may intervene as *amicus curiae*.

However, this does not remedy the fact that too many cases are brought on issues that are similar or closely related. Proceedings before the Court are still governed by a case's factual context, which is sometimes very limited. The Court refuses to rule *ultra petita* and takes a very strict line on this rule, with the result that secondary questions remain unresolved, even though the main case was perhaps an opportunity to respond to them. This results in an exponential growth in the number of applications. Class actions would have advantages in terms of saving resources, but would also enable the Court to assess the scale of a problem.They would enable the Court to develop lessons that are more wide-ranging and, consequently, more effective. Intervention by NGOs in the capacity of *amicus curiae* is not sufficient in this regard, since the issue in question remains limited by the facts of an individual case. For example, in the case of *Mubilanzila v. Belgium*[8], the Court held that the detention of a five-year-old child for several weeks in a closed centre for foreigners was in breach of Articles 3, 5 and 8 of the Convention. Experience shows, however, that the detention of a five-year-old

8. *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, no. 13178/03, ECHR 2006-XI.

child is rare. The fact that the Mubilanzila judgment concerned solely the scenario in which a five-year-old child was detained for several weeks, without any adult assigned to look after her, limited considerably the lessons to be drawn from the judgment, which was nevertheless very firm with regard to the principles involved. The question was subsequently asked whether this judgment's conclusions extended to the detention of any underage child, whatever the period of detention. Another question is whether the treatment in violation of Article 3, as the impugned detention was found to be, would continue to amount to ill-treatment if the child were accompanied by an adult assigned to look after him or her, or by his or her parents.

These many questions, which have remained unanswered, could perhaps have been answered if the procedure had allowed for the proceedings before the Court to extend beyond the facts of the initial application. Such an extension would be automatic in a class action. It is true that without having recourse to a class action in the traditional sense of the term, the Court could take into consideration numerous related questions submitted by the amicus curiae or NGOs in the course of a particular case. The latter's observations would be a form of further pleadings, providing information to the Court on which points of law should be ruled on in order to respond fully to the initial question. This would not require an amendment to the Convention or to the rules governing procedure, but would simply require that a more wide-ranging approach be taken in the judgment. The Court should perhaps be permitted to depart from an interpretation of the concept of victim that focuses primarily on the existence of damage. In the past, for example in the Dudgeon case, the Court could have held that an individual can be the victim of legislation solely on account of the latter's existence, if it is found to hinder his or her individual rights on a daily basis.

A class action is also a means of ensuring the effectiveness of the rights of the most vulnerable. It enables action to be taken where an individual application is an illusion, or where the conservation of victim status is too uncertain. I am thinking here of cases concerning mass violations of human rights, such as those occurring in Chechnya, where the applicant's disappearance can render a case devoid of purpose. The same applies when a foreigner is deported and the applicant thus loses his or her victim status.

The various cases concerning the Lampedusa immigrants illustrate this point. In the case of *Gomaa Hamed and 196 Others v. Italy*, the application was struck out of the list[9]. On 14 September 2005 the President of the Third Section had decided not to grant the request for interim measures submitted by the applicants on the basis of Rule 39 of the Rules of Court. The applicants' representatives then failed to resume contact with the Registry. The case file shows that the majority of the

9. *Gomaa Hamed and Others v. Italy* (dec.) (striking out), no. 24697/05, 12 April 2007.

applicants were deported to Libya, Egypt or Morocco, or were released. It seems, however, that this case raised important questions of principle. The fact that a similar case was declared admissible during the same period only strengthens this impression[10]. Ultimately, factual circumstances determine the outcome of proceedings more than legal issues. The most vulnerable applicants could see their applications rejected more rapidly where these lose their purpose as a result of the applicants' deportation, disappearance or discouragement.

Finally, consideration could be given to bringing the criteria for collective applications into line with those for inter-State applications. Inter-State applications are based on the concept of a breach of duty, rather than that of victim. I do not believe that concern for respect for European public order can be limited only to States; besides, the latter use the inter-State remedy very infrequently. Little used, both at international and regional level, the inter-State procedure reflects an objectification of disputes, since it is enough for a State to claim that there has been a breach of duty, without having to prove that it is a victim of it. That being said, while one might regret the States' timidity in assuming a role in an objective dispute concerning respect for human rights, this reserve on their part leaves considerable room for individuals, who lie behind the development of the case-law and have assumed an active role in the expansion and implementation of international law. This reappropriation is significant. Today that role is still assumed primarily by individuals, acting on an individual basis. However, they have little weight against powerful and organised States. Allowing non-governmental organisations or representative groups to act would re-establish, imperfectly but at least partially, the balance. Collective applications exist in other entities at national level, in the European Social Charter and also at the African Court of Human Rights, although the latter still retains the right to select applications through a process similar to that of *certiorari* review. In addition, the acceptance clause in respect of individual applications remains optional at that Court.

C. The content

The key phrase at this stage could be "dare to be clear", without however bringing to mind an advertising slogan. The Court is in the schizophrenic position of being eager to reduce its workload and, simultaneously, to deliver more standard-setting judgments. In delivering judgments which "stick" to the circumstances of the case, however, the Court reduces the scope of its teaching. Too many judgments are delivered "in the circumstances of the case". The recent judgment in *E.B. v. France*[11], on adoption by a homosexual, could be a model of the genre. In it, the Court stated that it was not reconsidering its previous case-law, namely the

10. *Hussun and Others v. Italy* (dec.), nos. 10171/05, 10601/05, 11593/05 and 17165/05, 11 May 2006.
11. *E.B. v. France* [GC], no. 43546/02, to be reported in ECHR 2008.

Fretté case[12]. Yet it is difficult to see how else one can describe the E.B. judgment, other than as a judgment that overturns the case-law.

The Court implied that it was the factual circumstances which led it to reach a different conclusion. The principles set out by the Court and which amounted, whether the Court wishes it or not, to a departure from the case-law were then bogged down in the specific facts and became difficult to use in other cases. This clearly contributes to the lodging of other applications on the same issues. The *Saadi v. Italy*[13] judgment provides a contrast to this trend. Here, the Court sought to rebut all the arguments raised by the United Kingdom, a third-party intervener in the case, in order to establish clear and indisputable principles. The Court shows clearly in this case that, in its opinion, the discussion is closed. Although shades of meaning are inevitable and are frequently a method of juggling the sensitivities of States, the Court gains in credibility when its judgments are clear. Both silences and things left unsaid are chasms into which States and applicants rush. Without wishing to demonise them, the former use these silences to escape from their responsibilities. The latter grasp what is left unsaid as grounds for continued optimism.

Of course, case-law is constantly developing, and this has often been the case in Strasbourg, where the Court seeks to reflect changes in society. Dissenting opinions may be a forum for opposition and hesitation, but not the judgments themselves. It is better to have a clear judgment with a small majority than an unanimous judgment that remains ambiguous. Practitioners appreciate the technique of dissenting opinions, which enable them to discern the other approaches that were explored or are conceivable. As Ms Claire L'Heureux-Dubé, a judge at the Supreme Court of Canada, has emphasised, "dissents are a positive force which enhance collegiality, provide the legal community with alternatives, [and] influence majority rulings"[14].

In conclusion

I have merely voiced a few thoughts, without claiming to know the solutions to the various difficulties that I have emphasised. My personal experience of the procedures in Strasbourg is very limited. Thus, it is in all humility that I have addressed you today. My criticism is intended to be positive. It comes from a practitioner who believes, today more than ever, in the usefulness of a European Court that is dedicated to the interpretation of and compliance with the rights and freedoms guaranteed by the Convention. Do not forget that it comes from an admirer. We still have need of wise persons, of judges who step back from the fray in order to bring a fresh but expert eye to issues of human rights.

12. *Fretté v. France*, no. 36515/97, ECHR 2002-I.
13. *Saadi v. Italy* [GC], no. 37201/06, to be reported in ECHR 2008.
14. Speech by the Honourable Claire L'Heureux-Dubé at the ceremony on 10 June 2002 to mark her retirement.

If we are not to throw the magnificent baby that is the right of individual petition out with the bathwater of the Court's backlog and workload, it is essential to arrive at a situation where individual petition is sustainable and useful. The challenge is to identify methods that filter by quality rather than quantity. This goal would be furthered by eliminating the distinction between admissibility and the merits, by creating synergies and by an effort to deliver judgments which eradicate the silences and unresolved issues that lie between the lines.

I firmly believe that effective protection of human rights cannot be sacrificed, even partially, in the name of practical considerations such as the difficulties in processing the volume of applications. Indeed, one of the lessons of the Convention is to show that certain rights and freedoms are so important that only very pressing reasons, whose legitimacy has been established, can justify the imposition of restrictions on them. The Court is not only the final judge and the last refuge in cases concerning human rights, but it is also a model, with a duty to serve as an example and to be above reproach. Within the Court, practical difficulties cannot be considered pressing reasons. This does not mean that they must be ignored in the naïve belief that they will pass. On the contrary, it means that we must get down to resolving these difficulties by methods that are compatible with the objective that the Court has set itself, namely the protection of human rights.

Camus left us this wonderful phrase: "Justice is not merely an idea, it is warmth for the soul." May we continue to find it in Strasbourg for a long time to come, when our domestic systems are sometimes so cold.

PRESENTATION OF YONKO GROZEV

Mr Sverre Erik Jebens
Judge at the European Court of Human Rights elected in respect of Norway

I have the honourable task of introducing Mr Yonko Grozev as a speaker at today's seminar. Yonko Grozev is an advocate in Sofia, Bulgaria, and he also acts as an adviser to the Bulgarian Government on human rights issues. He has behind him a long and varied career as a lawyer, within the field of human rights and in related areas.

Yonko Grozev was the director of the Legal Defence Programme of the Bulgarian Helsinki Committee from its establishment in 1995 until 2002. He has brought and won a large number of cases before the European Court of Human Rights on different subjects, such as the right to life, prohibition of torture and freedom of speech, religion and association. The cases he has litigated internationally have produced and continue to produce legislative changes. For his outstanding work in the field, Yonko Grozev was awarded the 2002 International Human Rights Award from the American Bar Association Section of Litigation. In addition to his international and domestic litigation work, Yonko Grozev has been active in research and advocacy on improving the work of the justice system in Bulgaria, also in his capacity as a member of the Centre for Liberal Strategies team since 1994. He has also been active in providing training to central and east European lawyers on litigation techniques before the ECHR. He is a graduate of the Harvard Law School.

Yonko Grozev will give an introduction on "How human rights protection has evolved since the entry into force of Protocol No. 11".

HOW HUMAN RIGHTS PROTECTION HAS EVOLVED. A CRITICAL ANALYSIS OF TEN YEARS OF CASE-LAW

Mr Yonko Grozev
Lawyer, Sofia (Bulgaria)

The 10th anniversary of the Court is certainly a time to celebrate its remarkable achievements. It is also a time to look ahead. Over this period, despite the significant challenges of its caseload, the Court has remained true to its mission of protecting the rights of every individual. And thanks to the quality of its judgments and their reasoning the Court has, as many have observed, become in a real sense the Constitutional Court of Europe in human rights matters. While setting the common standard for human rights throughout Europe, the Court has also played an extremely important role in guiding the new democracies in the east of the continent in establishing reliable human rights guarantees. From the perspective of those countries joining in the 1990s, the Court represented a unique institution which held the promise both of delivering justice in individual cases and of bringing about changes in countries' laws and institutions. Today, looking back over those ten years, I can say that this promise has been amply fulfilled.

A comprehensive review of ten years of case-law by the Court is, of course, impossible. There are thousands of judgments and hundreds of important legal issues which the Court has addressed throughout those years. It is extremely difficult to place all those judgments and issues, and the impact they have had, in order of priority. The Court's most significant contribution lies in the clear and consistent standards it has developed and elaborated in different contexts. Among the vastly important achievements of the Court have been its judgments in the sphere of protecting core political freedoms: freedom of speech, assembly and association. In cases concerning freedom of speech, the Court has consistently and convincingly protected free speech in its crucial role of making democracy work. It has guaranteed the political representation and participation of minorities and disenfranchised groups. It has convincingly protected religious rights, developing and detailing important standards in the last ten years in this field, which until recently was underdeveloped. The Court has maintained its impressive record in protecting the right to life and liberty and the prohibition of torture, particularly in zones of armed conflict such as south-east Turkey and Chechnya, and added important precedents concerning the liability of States for territories under their *de facto* control. And last but not least, the Court has continued to guarantee and further develop detailed standards concerning procedural guarantees and fair-trial

issues, the field with the most abundant case-law and the one that has had the furthest-reaching impact on the domestic legal systems of the member countries.

Special mention should be made of the Court's achievements in formulating case-law in a field that has until recently received little attention, namely protection against discrimination. The Court has provided guidance in relation to racially motivated violence, laying down in a number of cases clear standards as regards the State's duty to investigate and prosecute racist violence. Most significantly, in a school segregation case, *D.H. v. the Czech Republic*[1], the Court adopted the standard of reversal of the burden of proof in discrimination cases, which has been a part of EU law and the domestic law of many countries both within and outside the Council of Europe that have well-developed anti-discrimination laws. The requirement for a defendant to prove that no discrimination occurred, once a plaintiff has provided evidence to the contrary, is a key element of any well-developed legal system to combat discrimination, and by adopting it as a general principle the Court has significantly improved anti-discrimination law in Europe.

Before turning to other issues I will mention one last case, which demonstrates in practical terms the type of scrutiny that courts should be exercising in cases of alleged discrimination on questionable grounds. In *E.B. v. France*[2], the Court reviewed the refusal of the domestic authorities to grant a homosexual leave to adopt, ruling that there had been a violation of Article 14. What makes this case important is the willingness of the Court to subject the refusal to strict scrutiny, looking into the precise reasons given for the decision by the domestic authorities and ultimately judging them to be insufficiently consistent and finding a violation. This approach differed from an earlier judgment of the Court on the same issue, and it is important to highlight it as it does real justice to the concept of protection against discrimination.

As I have been invited to make a critical review of the Court's case-law, I will now focus on a few issues which, in my view, present particular challenges. These issues have been selected from a critical perspective, not least because of a belief that a rich, vivid and open discussion of the difficult issues the Court faces can only make its judgments better informed and ultimately improve its case-law. In this spirit, I will focus on three issues: (1) the issue of Islam and the Court's understanding of and ability to stay neutral and unbiased in relation to matters of Muslim beliefs, (2) case-law with respect to the deportation of foreigners and the balance being struck by the Court between private and family life on the one hand and public order and security on the other and (3) issues relating to the execution of judgments and just satisfaction under Articles 46 and 41 of the Convention, which I would like to look at not just as rights guaranteed under the Convention, but also as tools that might allow the Court to increase its effectiveness.

1. *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, ECHR 2007-XII.
2. *E.B. v. France* [GC], no. 43546/02, to be reported in ECHR 2008.

The issue of Islam presents a challenge to the Court as neither the historical tradition on which the Court is built nor the judges on a personal level have first-hand experience of Islam. And such experience undoubtedly plays a role in the fine balancing act the Court is called upon to perform. A case that demonstrates the difficulties involved is *Leyla Şahin v. Turkey*[3], in which both Chambers of the Court decided that a university student could be required to take off her headscarf if she wished to pursue her studies. What I find particularly difficult in this judgment is the decision of the Court to step back from a direct analysis of the proportionality of the contested measure, the particular aims of that measure and the way it was enforced. Instead, the Court relied in its analysis on an overarching analysis of Islam, secularism and democracy. It declined to analyse the measure from the perspective of its standard approach in such cases, which would have been that of looking at an adult prohibited from manifesting her religion on pain of forfeiting her right to education, in an environment in which no one was being subjected to undue influence. Rather than doing that, the Court replaced its standard analysis with the concept of secularism and the need to protect it in Turkey. An issue on which it then deferred to the Turkish State. Try as we might to avoid such a conclusion, implicit in this analysis is an assumption that Islam is different from other religions and its relationship with democracy more strained.

In both judgments in the *Şahin* case[4], the Court also made reference to the headscarf as a symbol of the oppression of women, as a reason justifying the ban. As someone who has no personal experience of Islam, I wondered to what extent that was true. I asked a friend who is Turkish and now lives in London to tell me how she would interpret the wearing of a headscarf in symbolic terms. She answered not with a statement but with a story. She told me that she has two cousins who were brought up in very different family environments, one in a traditional, religious environment where wearing the headscarf was the undisputed norm, and the other in a worldly, liberal environment where the practice was never followed. When the girls grew up, the first one became disenchanted with traditional ways and rebelled; among other things, she stopped wearing the headscarf. The other girl met and fell in love with a deeply religious man, married him and began to wear a veil. I was fascinated by the story, which in my view simply confirmed the wisdom of the Court's usual approach, which would be to guarantee to competent adults the right to practise and manifest their religion as long as they are not in a position to exercise undue influence on others. It is also a good reminder, I believe, of the need to resist easy stereotypes when dealing with the religious rights of Muslims in the future.

Another issue that presents a significant long-term challenge to the Court is the issue of the deportation of aliens, and the balance the Court needs to strike in such cases between private and family life on the one hand and public order and

3. *Leyla Şahin v. Turkey* (preliminary objection), no. 44774/98, 29 June 2004.
4. *Leyla Şahin v. Turkey* [GC], no. 44774/98, ECHR 2005-XI.

security on the other. It is a difficult balance, as numerous factors need to be weighed up and, to make it even more difficult, it is directly linked to immigration policy, an issue which is highly charged politically. The Court, however, cannot escape reviewing these issues, as this is fundamentally a question of basic rights.

The Court recently performed such a balancing exercise in *Üner v. the Netherlands*[5], a judgment which was delivered by the Grand Chamber, giving it even more visibility and authority. In this case the Court ruled on the deportation of a Turkish man who arrived in the Netherlands at the age of twelve with his whole family and lived in that country until the age of thirty, when he was deported. He had a partner, a Dutch national, with whom he had two children. The man had a previous conviction and was then convicted of manslaughter and sentenced to seven years in prison. He was deported immediately after serving his sentence. The Court found no violation of the Convention. In striking the overall balance, the Court seems to have given significant weight to the applicant's criminal behaviour. I wonder whether that should be the focus of the analysis. In general, deportation is not a crime-fighting measure and governments have a whole array of instruments for fighting crime, the effectiveness of which we have no reason to doubt. Only where those instruments clearly fail, which in principle is somewhat exceptional, should other measures be needed. The government should also be required to prove that they have failed, particularly in cases where the person deported has such strong ties with the country of residence and very weak ties with the country of nationality. The final issue I wish to address is the case-law of the Court under Articles 41 and 46 of the Convention in relation to just satisfaction and the execution of judgments. I would like to do so not necessarily, or not solely, from the perspective of the rights these Articles guarantee, but also to look at them as tools that might allow the Court to increase its effectiveness.

The Court has always been reluctant to address in more detail the relevant issues for awarding compensation. The case-law under Article 41 lacks detail and often lacks reasons. The criteria according to which the Court reaches a particular decision are difficult for outside observers to comprehend. That is to some extent understandable. The amount of compensation to be awarded, particularly for non-pecuniary damage, is hard to determine, and it is even harder to outline clear and foreseeable standards guiding that decision. National courts also struggle with the issue, as pain and suffering are hard to gauge and excessively strict guidelines would deny the courts the freedom they need to allow for different circumstances. The academic literature proposes widely divergent approaches. A consistent, generally accepted approach and set of standards have yet to emerge. And in addition to all these difficulties, the Court has a further one, namely the significant variations in the standard of living and purchasing power of the euro in the countries within its jurisdiction. Another reason for the Court to shy away

5. *Üner v. the Netherlands* [GC], no. 46410/99, ECHR 2006-XII.

from devoting too much attention to the issue of compensation might well be an underlying assumption that it is not that important. The Court, according to this assumption, is there first and foremost to set standards on basic rights, and compensation for violations is at best secondary in importance. It might also be thought unwise, in view of the Court's overwhelming caseload, to draw too much attention to compensation and thus attract even more applications.

While in no way underestimating the difficulties, I do not think that sidelining the issue of compensation is viable and the best approach in the long run. The Court is the ultimate authority on human rights, and compensation is by definition a key element of any remedy for a violation of rights. Thus, even if a radical step is taken in the form of removing the power of the Court to award damages altogether, the issue will come back to the Court as one of procedural guarantees and effective remedies. This cannot simply be left to the discretion of the national authorities and courts. And the Court will only be true to its mission if it helps develop clear standards through more detailed and reasoned case-law. This is quite important both for the authority of the Court, which ultimately depends on the clarity of its reasoning, and also for giving clearer guidance to national courts and thus transferring more of the responsibility for human rights protection to them. What I see as the right approach is the line taken by the Court in the Chamber judgment in *Cocchiarella v. Italy*[6], where it laid out a clear rationale for determining damages for excessive length of proceedings. This approach was not, however, repeated in the Grand Chamber judgment, leaving its authority somewhat in doubt.

Another argument in favour of developing the case-law under Article 41 is that it is an important tool for encouraging compliance with human rights law. Compensation is one of the motivating forces behind complaints, though not the principal one, which is to obtain justice. But damage awards constitute a very clear and simple means of conveying the seriousness of a violation, one the public can easily understand. That is why awards for damage make headlines in a way that complicated legal arguments cannot, mobilising governments to take measures to improve prevention and domestic remedies. And if we follow this line of reasoning, one effective use of Article 41 for achieving better compliance would be the introduction of punitive damages for repeated violations. Just a few countries are responsible for most of the vast number of cases before the Court, which pose an unacceptable threat to the Court's effective functioning. While steps to limit the inflow of cases are being actively considered, steps to improve prevention and domestic remedies should also be. For the same reason the Court should also look more actively at developing its case-law under Article 46. A good example of such an approach is the recent judgment in *Verein gegen Tierfabriken Schweiz v. Switzerland*[7], where the Court reviewed carefully whether the domestic

6. *Cocchiarella v. Italy* [GC], no. 64886/01, ECHR 2006-V.
7. *Verein gegen Tierfabriken Schweiz (VgT) v. Switzerland*, no. 32772/02, 4 October 2007.

courts had considered to a sufficient extent their obligation to enforce the judgment of the Court. This analysis, however, might well be better conducted in the context of Article 46 rather than in relation to the relevant substantive right as was done in the above-mentioned case.

Pinpointing the issue as one of responsibility to execute a judgment would allow the Court to better indicate the responsibilities of the national authorities in that respect. Something that might eventually lead to improved domestic protection, giving the Court more time to focus on its central task of developing basic standards.

PRESENTATION OF CONSTANCE GREWE

Mr Egbert Myjer
Judge at the European Court of Human Rights elected in respect of the Netherlands

It is my pleasure to introduce Constance Grewe, who has the not-so-easy task of summing up the general conclusions of the seminar.

The very mention of her name should suffice. She is rightly considered to be one of the leading international (and Strasbourg) experts on comparative constitutional law and on international human rights law.

Constance Grewe studied law in Germany and in France. She was a professor at the Universities of Chambery and Caen and since 1997 has been a professor at the Robert Schuman University of Strasbourg. In 2004 she was also appointed a judge at the Constitutional Court of Bosnia and Herzegovina.

She has published a number of books, including *Droits constitutionnels européens* which is, comparatively speaking, the best book on comparative constitutional law around.

When she concludes, there really is no more to be said.

CONCLUSIONS OF THE SEMINAR

Mrs Constance Grewe
Professeur at the Robert Schuman University, Strasbourg,
Director of the Carré de Malberg Research Institute (IRCM), and
Judge of the Constitutional Court of Bosnia and Herzegovina

Introduction

How am I to conclude after such fruitful contributions on such a vast subject? First of all, it seems wise to exclude from my remarks the question of the reforms that States Parties could or should put in place to help break up the logjam in the European Court of Human Rights; not only has there already been a colloquy on that subject[1], but above all the 10th anniversary of the "new" Court should be entirely devoted to the latter. On the other hand, I would like to return to, and comment on, a few points made in the discussions which I find particularly significant, adding my own obsessions and twists as I go. In doing so, I may appear more critical than necessary, but my criticisms are meant to be entirely constructive.

As the Group of Wise Persons pointed out, and as has been mentioned already this afternoon, "the right of individual application is today both an essential part of the system and a basic feature of European legal culture"[2]. It represents a considerable advance, both in terms of principles and on a practical level. The individual as a subject of international law and an entirely judicial procedure are fundamental principles. From a practical point of view, the number of applications attests to the Court's authority and the trust placed in it. The impressive success of the Court's judicial work is reflected not only in the figures but also in the Convention's impact on domestic law; we have heard to what extent the Court's case-law has been decisive in bringing about radical procedural reforms in Bulgaria and indeed many other countries. That case-law now serves as a model.

At the same time, that success is a terrible trap and a major challenge. How can the quality, authority and legitimacy of the Court's case-law be maintained and enhanced, how can the system be made both effective and fair at the same time?

If the task of a judge is to settle a dispute on the basis of the applicable law, it has to be said that, in the case of the European Court of Human Rights, the

1. F. BENOIT-ROHMER, C. GREWE, P. WACHSMANN, "Quelle réforme pour la Cour européenne des droits de l'homme ?", Strasbourg colloquy on 21 and 22 June 2002, RUDH 2002, n° 7-8.
2. Report of the Group of Wise Persons to the Committee of Ministers, § 23.

applicable law emerges very largely from the search for a practical solution to a particular dispute. The Court's function is therefore not only to determine specific issues and decide specific cases, it is also to state what the law is, to deliver an authentic interpretation of the Convention, to create a European standard of rights protection or, as the Court has said itself, to create a "European public order"[3]. This standard, inspired by the objective of greater unity between the States Parties to the Convention, and by the idea of the maintenance and further realisation of human rights, particularly through the rule of law[4], obliges the Court to give judgment in a way which is simultaneously coherent, respectful of State autonomy, evolutive and effective. And that is very difficult.

One of the most crucial problems lies in the fact that the fairest rights protection system has been perceived to be the one in which every individual has the right of access to the Court and the right to redress for infringements of the rights guaranteed. But the multiplication of judgments given on individual applications in particular cases carries the risk of a negative impact on the Court's other functions, in particular the task of creating a European public order based on clear standards and that of providing effective protection of rights. How therefore is the Court to settle a dispute (I), while creating a European public order (II) and ensuring the effective protection of rights (III)?

I – Settling particular disputes

Opting for individual petition has led to rejection of all reforms leading to a discretionary selection of cases, and to the creation of a kind of constitutional appeal, like an appeal to the US Supreme Court. I feel that is the right choice and I have supported it when I have had the opportunity to do so.

However, it is a choice which comes with a price: the Court cannot be relieved of the burden of all these cases since all applications are equal in principle. As a result, measures to lighten the caseload are likely to be only relative, but the principle of individual petition does not exclude fixing priorities. In that respect, pilot judgments are no doubt a precedent to be explored further.

The choice of individual petition is also important for the protection of the rights guaranteed. For example, the Court has refused to exercise two-speed supervision, with a more systematic scrutiny of the countries of central and eastern Europe than of those of western Europe. That principle is to be welcomed, not only because rights violations also occur in western Europe, but also to illustrate the indivisibility of human rights.

3. *Loizidou v. Turkey* (preliminary objections), 23 March 1995, Series A no. 310.
4. Preamble of the European Convention on Human Rights.

The idea of individual petition also entails for the Strasbourg Court the refusal to carry out an abstract review. Unlike the position in many domestic legal systems, the Court refuses to say whether a legal rule in issue is or is not in itself compatible with the Convention because "in cases arising from individual applications it is not the Court's task to examine the domestic legislation in the abstract, but it must examine the manner in which that legislation was applied to the applicant in the particular circumstances"[5].

That attitude is not without its disadvantages: it prevents the European judge from explaining to the national judge what must change; it thus takes away from European case-law a part of its legibility. Taken together with the organisation of the Court, particularly the fact that the Grand Chamber is composed of only seventeen judges and that its composition varies, it paves the way for inconsistency.

It was also that refusal which led the Court to resist any "judicial policy-making". However, the adoption of a Court policy might help to alleviate its burden when, for example, the domestic system under scrutiny complies with the minimum standard. That "claim" is at present the subject of a broad debate in Germany under the name of "solution corridor". The idea is to say that where a State complies with the minimum standard, a number of practical solutions are compatible with the Convention[6]. Although the Court thus focuses on doing justice in the specific case before it, it also has the task of creating a European public order[7], and the latter task often seems to be delayed or hampered by the former.

II – Creating a European public order

For some time the Court has been attempting, in small stages, to reorganise its relations with the domestic courts[8]. Taking subsidiarity as more than just a word, the Court has made it clear that it wants the national legal systems to rule effectively and efficiently on allegations of a violation of the Convention (Articles 13 and 6). That cooperation is leading to a growing interconnection between the national courts and the European Court such that one can see in it the first beginnings of

5. *Sahin v. Germany* [GC], no. 30943/96, ECHR 2003-VIII.
6. Contribution of J. MASING, Judge of the German Federal Constitutional Court, to the seminar of 10 October 2008 on freedom of expression, www-ircm.u-strasbg.fr/seminaire_oct2008/interventions_en.htm.
7. J.A. FROWEIN, "The European Convention on Human Rights as the Public Order of Europe", *in:* Collected Courses of the Academy of European Law, vol. I, book 2, Kluwer 1992, pp. 273 et seq.; F. SUDRE, "Existe-t-il un ordre public européen?", *in:* P. TAVERNIER (ed.), *Quelle Europe pour les droits de l'homme*, Bruylant, 1996, pp. 39-80.
8. C. GREWE, "Quelques réflexions sur la fonction de juger à partir de l'arrêt Mamatkulov c. Turquie rendu par la Cour européenne des droits de l'homme le 4 février 2005", *in:* P.-M. DUPUY, B. FASSBENDER, M.N. SHAW, K.-P. SOMMERMANN, Völkerrecht als Wertordnung/ Common Values in International Law. Festschrift für / Essays in Honour of Christian Tomuschat, N.P. Engel Verlag, 2006, pp. 527-544.

a composite European constitutional order, like the "multi-level government" of the European Union[9].

The interaction between the law of the European Convention on Human Rights and the national legal systems is a long-established phenomenon as regards the effects of European case-law on domestic law. On the other hand, it is a more recent phenomenon in the sense of "division of labour" it has been given at the prompting of the European Court. This new division of labour has been achieved in three main stages.

The first was to give Article 13 a higher profile in the *Kudła v. Poland* judgment[10]. Article 13 obliges States Parties to provide an effective remedy before a national authority in the event of a violation of one of the rights set forth in the Convention. For a long time Article 13 played a modest role, both on account of its dependence on Convention rights and because it was not clear which authority was meant to intervene. In the Kudła judgment the European Court held that Article 13 must guarantee an effective remedy to complain of the length of proceedings. Similarly, in connection with Article 6 of the Convention, it now requires the claim of a failure to comply with the reasonable-time requirement to have been raised and determined at national level before it will declare such applications admissible.

The second stage was to establish a link with national interim measures; this was done in the *Čonka v. Belgium* judgment[11]. In the Čonka case, in which, precisely, the Court did not call into question the Soering[12] and Cruz Varas[13] case-law on interim measures, it held that there had been a violation of Article 13, there being an arguable complaint (of a breach of Article 4 of Protocol No. 4), since domestic law did not provide for a mandatory stay of execution, which made "the implementation of the remedy too uncertain to enable the requirements of Article 13 to be satisfied"[14]. Similarly, the case-law accepts that Article 6 is breached when an applicant does not have access to the Constitutional Court[15].

The third stage was to establish a link with European interim measures. This was done in the Mamatkulov judgment[16]. In the Mamatkulov case the Court observed – rather slyly – that it was hard to see why what was a requirement in the domestic legal system should not also be a requirement at international level, or in other

9. I. PERNICE, "Multilevel Constitutionalism and the Treaty of Amsterdam: European Constitution-Making Revisited?", *in:* Common Market Law Review, 1999, pp. 703 et seq.; I. PERNICE, F.C. MAYER, "De la constitution composée de l'Europe", *in:* RTDE 2000, pp. 623 et seq. In this case the appropriate term would be "multilevel jurisdiction".
10. *Kudła v. Poland* [GC], no. 30210/96, ECHR 2000-XI.
11. *Čonka v. Belgium*, no. 51564/99, ECHR 2002-I.
12. *Soering v. the United Kingdom*, 7 July 1989, Series A no. 161.
13. *Cruz Varas and Others v. Sweden*, 20 March 1991, Series A no. 201.
14. *Ibid.*, § 83.
15. *Zedník v. the Czech Republic*, no. 74328/01, 28 June 2005.
16. *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, ECHR 2005-I.

words that an indication of interim measures was binding, but without saying that it had itself striven to ensure the existence of national interim measures. The same trend can be observed in the orders to desist immediately from unlawful acts[17] or take measures in the event of a structural problem[18].

Such interconnection is to be found in the pilot judgment technique[19], calculated to deal with the problem of structural dysfunctions. It consists in adoption of an initial judgment on the merits noting the existence of the problem and inviting the parties to negotiate with a view to reaching a friendly settlement. In the meantime processing of all pending applications is suspended. If a friendly settlement is reached, the Court checks its compatibility with the Convention in order to be able to strike the case out of its list. On the other hand, the penalties imposed on States for non-compliance mentioned during today's seminar do not appear to me to be consistent with the spirit of dialogue with national courts which the Court seems to be trying to introduce.

The function of creating a European public order is also important for the protection of rights. As the Court pointed out in the Čonka judgment, "it should be noted that the requirements of Article 13, and of the other provisions of the Convention, take the form of a guarantee and not of a mere statement of intent or a practical arrangement. That is one of the consequences of the rule of law, one of the fundamental principles of a democratic society, which is inherent in all the Articles of the Convention"[20].

Pilot judgments must be mentioned again in this connection, where the infringement of a substantive right is criticised therein. This technique obliges the Court to identify much more precisely than in the past the inadequacies of domestic law. The trend is therefore towards a more abstract review calculated to help the domestic authorities find the appropriate remedies. Another aspect of this function is the more searching review the Court often carries out, in which the reference to autonomous concepts produces in many cases more effective protection than would be possible under the minimum standard approach. This applies in particular to the review of proportionality, especially as between two private interests.

However that raises again above all the question of the margin of appreciation and its more rational use. I am thinking here of the remarks about Islam, but I think it is not simply Islam nor religion alone which are in issue but much more generally what might be called cultural pluralism. This is not about classic legal

17. *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, ECHR 2004-VII.
18. *Broniowski v. Poland* [GC], no. 31443/96, ECHR 2004-V.
19. Cf. M. KELLER, "50 Jahre danach: Rechtsschutzeffektivität trotz Beschwerdeflut? Wie sich der EGMR neuen Herausforderungen stellt", EuGRZ 2008 no. 12-15, pp. 359-369; S. SCHMAHL, "Piloturteile als Mittel der Verfahrensbeschleunigung", EuGRZ 2008 no. 12-15, pp. 369-380.
20. *Ibid.*, § 83.

pluralism, in which Norwegian culture might be compared with Turkish culture, for example. The problem is much more complex than that, because each of our societies is becoming more multicultural and must face up to conflicts between a variety of normative systems and roles played by individuals. In short, the major challenge is the challenge of pluralism, which runs through and threatens to divide each society. Consequently, a whole series of questions arise: what, for example, does democratic society mean, is it European society or national societies? By what right does the State represent its society; should it not prove that its legal system has taken society's needs into account, or in other words, should it not bear the burden of proof in that regard? What should be the criteria for the margin of appreciation, given that when the Court refers to that concept it means that it does not wish to settle the dispute but prefers to have it dealt with by the State? Closely bound up with the creation of a European public order is the function of ensuring the effective protection of rights.

III – Ensuring the effective protection of rights

The effective protection of rights was a constant concern of the old Court, as it is of the new, but it is clear once again that in this the Court's efforts are hampered by the rising tide of cases. Its concern is manifested in particular by the continuous reform process the Court has entered into with a view to making sure that the right of petition remains effective, but it is also perceptible in connection with the protection of rights.

The effectiveness of the right of petition dominates discussions and reforms aimed at speeding up procedures. The processing of repetitive cases, judgments dealing with admissibility and merits together, the increase in the number of decision-making bodies and Registry staff and the simplification of correspondence with applicants are significant illustrations of the process. But it is above all collective actions which have been mentioned today in this connection. The proposal is an interesting one, but the question arises whether it is compatible with the principle of individual petition. One compromise might be recourse to a pilot decision on admissibility with the possibility of a third-party intervention by NGOs. As to the manifestly inadmissible idea, I think that is problematic, because inadmissibility is never so manifest as that.

Lastly, as regards the effective protection of rights, the Court has made considerable progress in particular in the field of evidence. However, the critical role I have given myself today prompts me to express my regret that the constant increase in the number of cases and the structure of the Court are leading to inconsistencies and ineffectiveness. At a seminar on 10 October of this year we noted a number of backward steps in the field of freedom of expression[21]. I would also like to

21. Seminar on "The European protection of freedom of expression: reflections on some recent restrictive trends", www-ircm.u-strasbg.fr/seminaire_oct2008/interventions_en.htm.

mention here the problem of the case-law in the field of the prevention of terrorism, particularly the questions raised by execution of the Security Council's resolutions under Chapter VII. In that connection, I very much regret the ruling given by the Court in the Behrami[22] and Berić[23] cases. I find the distinction between discretionary power and non-discretionary obligation put forward therein rather formal when some of the Convention's foremost values are at stake. Moreover, that case-law does not seem to be entirely consistent with the Pellegrini[24] judgment, which stresses the neutralisation of law incompatible with European public order. Did the European Court of Justice not solve the problem more satisfactorily in its recent Kadi[25] judgment, using – I might add – reasoning similar to that given by the Court in its Bosphorus Airlines judgment[26] ?

22. *Behrami and Behrami v. France and Saramati v. France*, Germany and Norway (dec.) (striking out), nos. 71412/01 and 78166/01, 2 May 2007.
23. *Berić and Others v. Bosnia and Herzegovina* (dec.), nos. 36357/04, 36360/04, 38346/04, 41705/04, 45190/04, 45578/04, 45579/04, 45580/04, 91/05, 97/05, 100/05, 101/05, 1121/05, 1123/05, 1125/05, 1129/05, 1132/05, 1133/05, 1169/05, 1172/05, 1175/05, 1177/05, 1180/05, 1185/05, 20793/05 and 25496/05, 16 October 2007.
24. *Pellegrini v. Italy*, no. 30882/96, ECHR 2001-VIII.
25. ECJ, 3 September 2008, Grand Chamber, *Yassin Abdullah Kadi, Al Barakaat International Foundation / Council of the European Union, Commission of the European Communities, United Kingdom of Great Britain and Northern Ireland*, Joined cases C-402/05 P and C-415/05 P.
26. *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], no. 45036/98, ECHR 2005-VI.

Photo Gallery

Maud de Boer-Buquicchio, Deputy Secretary General of the Council of Europe, and Jean-Paul Costa, President of the European Court of Human Rights

Jean-Paul Costa, President of the European Court of Human Rights

Maud de Boer-Buquicchio, Deputy Secretary General of the Council of Europe

Françoise Tulkens, President of Section and judge at the Court elected in respect of Belgium, and President Costa

Isabelle Berro-Lefèvre, judge at the Court elected in respect of Monaco

Sylvie Saroléa, lawyer of the Nivelles Bar (Belgium)

Sverre Erik Jebens, judge at the Court elected in respect of Norway

Sylvie Saroléa, lawyer at the Nivelles Bar (Belgium), and Yonko Grozev, lawyer in Sofia (Bulgaria)

Egbert Myjer, judge at the Court elected in respect of the Netherlands

Constance Grewe, judge of the Constitutional Court of Bosnia and Herzegovina, and Sylvie Saroléa

Judge Françoise Tulkens

Judge Françoise Tulkens and President Costa

Christos Rozakis, Vice-President of the Court and judge elected in respect of Greece


Isabelle
BERRO-LEFEVRE

Testimonies

IV - TESTIMONIES

In this publication of the European Court of Human Rights, marking the 10th anniversary of the "new" Court, we give the floor to the main architects of Protocol No. 11. Each of them was asked briefly to describe a particularly significant moment or experience they remembered from the days of the preparation, adoption or implementation of Protocol No. 11 and the inauguration of the "new" Court.

It is not a scientific or technical analysis, therefore, but rather a personal message from those who played a decisive role in this reform of the human rights protection system.

We thank them warmly for their contributions.

The Organising Committee

10th ANNIVERSARY OF THE ENTRY INTO FORCE OF PROTOCOL No. 11 ECHR

Mr Andrew Drzemczewski
Head of the Secretariat of the Parliamentary Assembly's Committee on Legal Affairs and Human Rights at the Council of Europe

Credit where it is due. If one had to mention a "key" document which kick-started negotiations leading to the adoption of Protocol No.11, one need look no further than Herbert Petzold & Jonathan Sharpe's "Profile of the future European Court of Human Rights" (1988), supplemented by a touch of genius, attributed to Jens Meyer-Ladewig, in the form of some very neat footwork at what is known as "the Stockholm compromise" of 26 May 1993, when the idea of creating a single Court was finally accepted by States that had till then opposed the idea.

A pointer as to what should not be done on holiday: daily facsimile exchanges of texts with Jens Mayer-Ladewig, in August 1993, ensured that I become *persona non grata* at the Maltese Summer resort of Mistra Village. I made more use of the resort's fax machine than all its staff. It was during this intense exchange of faxes (which cost the Council of Europe about 100 Maltese pounds!) that the "Large Chamber" became the "Grand Chamber" (with Karel De Vey Mestdagh's help), an appellation later also incorporated into the European Court of Justice's nomenclature.

Stop looking for a scapegoat! I take this opportunity to reiterate for the very last time – to my friends Luzius Wildhaber and Paul Mahoney – that paragraph 66, second sentence, in the Protocol's Explanatory Report was not surreptitiously added by the Secretariat, but was a text openly negotiated and adopted by the CDDH (Steering Committee for Human Rights). The utility or otherwise of adding this sentence was – and rightly so – a decision taken by governmental experts and not the Secretariat.

Linguistic perfection guaranteed! Although ferociously opposed to the idea of a single full-time Court, the then Registrar of the Court, Marc-André Eissen, volunteered to re-read – in his spare time and over weekends – the French-language version of Protocol No. 11 and its Explanatory Report. Mr Eissen's linguistic improvements were of enormous help in ensuring the quality of the final product, but for obvious reasons he wasn't too keen on letting others know about this!

A thought for the future when the next Group of Wise Persons is constituted to save the present system from implosion: see document CDDH (92) 17, page 2, in which the financial repercussions of 20 "possible options" for the new Court were mooted. Why not revisit the idea of a full-time Court, consisting of a given number of chambers, with a part-time Grand Chamber of, say, 15 or 17 judges (see options 9 a-c)?

THE TRANSFER OF THE STAFF FROM THE OLD TO THE NEW SYSTEM

Mr Erik Fribergh
Registrar of the European Court of Human Rights

Looking back today it is difficult to fully appreciate the nature of what in 1998 separated the two institutions that were merged under Protocol No. 11. In the nature of things their work was entirely separate and there was understandably perhaps a healthy professional rivalry. Each tended to think that its contribution to the Convention system was more important than the other's.

In the run-up to the entry into force of the Protocol, this rivalry took on a new dimension as the different factions sought to preserve what they saw as the legacy of their institution. Both the Commission secretariat and the Court's Registry were deeply attached to the institution which they served and each feared that the merger would see a take-over by the other and the imposition of new working methods by those who did not fully understand the problems posed.

Coupled with this was a real apprehension of entering into unknown territory and of quite simply not having confirmation that their jobs would even exist beyond 31 October 1998. Some people feared that their posts would simply disappear, that the new Court would recruit new staff, or at least just retain a few staff members for the transitional period. The decision to transfer the staff of the Secretariat and the Registry to the new Court was not formally adopted until 27 October.

So a major challenge for the management of the institutions over this period was supervising that transition and ensuring that the merger of the two bodies of officials went smoothly. As it turned out the whole operation went much better than could have been imagined. This was no doubt partly because of the mixed composition of the Court: 10 judges from the old Court, 10 judges from the Commission and 20 new judges. The President was from the old Court, and the Registrar was from the Commission.

Initial tensions were in time eased as we all realised that we were working together towards the same goals and we quickly learnt to respect our new colleagues from either side, borrowing from the wealth of experience of both institutions. That cross-pollination played a significant role in forming the character of the new Court and therefore made an important contribution to what the Court is today.

It is interesting to note that the decision of 27 October 1998 was to transfer 189 posts and postholders to the new Court. Ten years later the Registry employs some 630 people, who work together in what I believe is an excellent atmosphere.

THE END OF A WORLD

Mr Pierre-Henri Imbert
Director General of Human Rights at the Council of Europe from 1999 to 2005

The end of a world. That is the memory that comes spontaneously to my mind when I think of the period when Protocol No. 11 was being prepared. For many, a world – their world – was disappearing. Everything seemed to be called into question: their status, their duties … and their professional survival, since it was obvious that the "new" Court would not have room for all the members of the Commission and the "old" Court. It was nothing less than a seismic shock, in both institutional and human terms, which overturned many habits, because time had moved on since the Court was set up in 1959. Although relations between the Commission and the Court were far from idyllic, a modus vivendi had established itself. There had been tension at times, but also much in the way of stimulation and emulation. That certainly helped the emergence of innovative and bold stands on points of principle which lay at the origins of the great decisions and judgments that still today structure the Court's case-law.

Those reactions therefore are readily understandable. But on the other hand the fact could not be ignored that this reform only realised the aims set out in the Message and the Resolution adopted in The Hague in 1948 by the Congress of Europe, by at last giving individuals direct access to the Court, whose jurisdiction became compulsory for all States parties to the Convention. Although this return to the sources should have been welcomed, the atmosphere was often heavy, "electric", as if the heat of the fusion to come was already making itself felt. That rather strange climate largely explains why the discussions focused on practically nothing other than technical questions, concerning structures and procedures. Moreover, the reform was based on the idea that, as the Commission was covering the same ground as the Court, abolishing it could only reduce the time taken for dealing with applications. That approach caused a question which to my eyes it is becoming more and more essential not to lose sight of, and that is: apart from the way it is to operate, what today should be the functions of a European Court of Human Rights? As the negotiations over and content of Protocol No. 14 have shown, it appears that the time is not yet ripe to tackle that question. Or at least not at intergovernmental level; perhaps it could be the theme for another seminar … without waiting ten years.

THE NEW COURT

Mr Hans Christian Krüger
Deputy Secretary General of the Council of Europe from 1997 to 2002

A significant contribution to the working of Protocol No. 11 was made by an informal Working Party, composed of the Presidents of the Court and of the Commission, and assisted by the Registrar of the Court and the Secretary to the Commission, and the Deputy Secretary General, assisted by the Director of Human Rights. Its report was delivered on 14 March 1997. Its objective was to propose budgetary arrangements for the future Court and reflect upon the status of that new Court.

The philosophy behind the thinking of most of the members of the Working Party was that the judges should be treated as specially appointed ("*hors cadre*") officials of the Council of Europe. That approach would not have necessitated any significant changes regarding the status of the new judges and would have corresponded to what had been adopted for European Courts elsewhere. Furthermore, it would have satisfied the obligation towards the new judges in respect of social protection such as health insurance and pension provisions. Finally, the financial implications would have been manageable since the scheme envisaged would have required an increase of only about 4.08 million euros in the Budget.

Unfortunately, the Budget Committee adopted a different approach. It left the judges in a hopeless situation, largely dependent on their home State as regards their social protection. Attempts to remedy this unsatisfactory situation should have due regard to the report of the informal Working Party that was prepared over ten years ago but could still be of interest today.

THE FUTURE OF THE JUDICIAL SYSTEM

Mrs Catherine Lalumière
Secretary General of the Council of Europe from 1989 to 1994

When I took up office in 1989 the Council of Europe was greatly preoccupied with the future of the judicial system (Court and Commission) whose operation had been entrusted to it by the European Convention on Human Rights.

I very soon became aware of the extent of the problem, which stemmed from the growing number of applications. True, the exponential increase in the numbers was a sign of the usefulness of the system. But it was clear that the quality of justice being delivered was in danger of suffering as a result. I was provided with worrying figures showing that the examination of cases was taking several years, amounting almost to a denial of justice. As the months went by and the Council of Europe began to develop its activities in the countries of central and eastern Europe and to prepare for their accession, it became obvious that the European Court of Human Rights was going to be completely submerged.

It was against this background that work on Protocol No. 11 began. We believed that success was vital in order to ensure the long-term survival of the supervision mechanism provided for by the Convention, which remains the jewel in the crown of the Council of Europe. A race against the clock was under way. The member States, with varying degrees of enthusiasm, followed. Protocol No. 11 was adopted and entered into force in 1998, after the end of my term of office.

Ten years have passed. Once again, the number of applications is increasing exponentially and jeopardising the functioning of the Court. What should we do? Without a shadow of doubt, we must persevere. We must do everything in our power to save a system which is one of the most solid and original achievements of the European spirit.

SOME REMARKABLE MEN

Mr Peter Leuprecht
Secretary of the Committee of Ministers of the Council of Europe from 1976 to 1980,
Director of Human Rights from 1980 to 1993, and
Deputy Secretary General of the Council of Europe from 1993 to 1997

As Director of Human Rights of the Council of Europe from 1980 to 1993 and Deputy Secretary General from 1993 to 1997, I was closely involved in the work that eventually resulted in the adoption of Protocol No. 11. As is my habit, at times criticised by some, I openly adopted a clear position from the outset in favour of this reform, which seemed to me essential. Fortunately, we had powerful allies in Switzerland, and in some of its citizens, who played a pivotal role in planning and negotiating the reform. I would like to pay a resounding tribute to them. I will recall just three landmark events: the Swiss report to the Ministerial Conference on Human Rights in Vienna, the Neuchâtel colloquy and the informal meeting of "like-minded" countries in Berne. Some remarkable men inspired and implemented the policy of the Swiss Government.

I would mention three of them in particular: Mathias Krafft, Olivier Jacot-Guillarmod and Bernard Muenger, the last two of whom, sadly, are no longer with us. These three men deployed all their intelligence and skill in order to bring about the reform. Walking back to the station with me after the informal meeting in Berne, Jens Meyer-Ladewig, referring to our Swiss hosts, said to me: "Just a small country, but so many exceptional individuals." He was absolutely right. It was a privilege to be able to work with them. We must hope that the Court, now and in the future, can count on individuals blessed with the same vision, the same determination and the same courage. It will have great need of them.

THE EFFECTIVENESS OF LOW-COST JUSTICE: THE GREAT ILLUSION OF PROTOCOL No. 11?

Mr Michele de Salvia
Registrar of the European Court of Human Rights from 1998 to 2001, and Jurisconsult of the European Court of Human Rights from 2001 to 2005

There is a passage in the Explanatory Report to Protocol No. 11 which offers an insight into the frame of mind of the High Contracting Parties when they decided on 28 May 1993 to embark on reform consisting of restructuring the system of protection. Hence, the declared aim of the undertaking was that of "improving efficiency and shortening the time taken for individual applications, at minimum cost" (point 4). The member States' plan was as follows: reform, inspired and necessary, but on the cheap. We have since seen that the declared aims have not been achieved and that in this regard the Court's budget and the budget for the execution of judgments have literally exploded. For if we take a closer look at what was envisaged, we see that the "effective mechanism for the filtering of applications" was passed over and that an idea worthy of greater consideration fell by the wayside, namely the appointment of Advocates-General whose role and functions might have helped the Court attain the objectives set forth by the authors of Protocol No. 11. What is more, those objectives have been pursued with more generosity of spirit than clear-sightedness.

The refutable logic of the "minimum cost" approach has indeed proved a (very) poor guide. A further, even more far-reaching, reform would seem inevitable. It is to be hoped that the wrong turnings taken in the past will at least ensure that the narrow road of renewed ambition is paved with better intentions.

IN MEMORY OF OLIVIER JACOT-GUILLARMOD 1950 – 2001

Mr Stefan Trechsel
Vice-President of the European Commission of Human Rights from 1987 to 1994, and
President of the European Commission of Human Rights from 1995 to 1999

Old men are dangerously tempted, when invited to present a text for a jubilee, to seize the occasion for the purpose of finally casting the appropriate light on their merits in the achievement which is celebrated. I resist this temptation by evoking the memory of someone who, alas, is no longer amongst us – Olivier Jacot-Guillarmod, victim of a malignant illness at the almost tender age of 51.

While many others worked hard to bring the Protocol No. 11 into being – let me just mention Jochen Abraham Frowein and Norbert Engel – Olivier, a legal expert with the Swiss Ministry of Justice and Police, was particularly effective.

We had a seminal meeting which is quite unforgettable for me. On a marvellous sunny day, in the park of an idyllic little château near Berne, he took me aside and asked me what I thought of a fundamental reform of the judicial system to implement the Convention. I had discussed that issue with other colleagues and was acutely interested. In less than an hour we had realised that our views coincided to a very large extent, and Olivier then organised a colloquium in Neuchâtel where the idea of a permanent court was for the first time discussed in an international assembly of experts and politicians. It was soon published in a very carefully edited volume.

I do not hesitate to affirm that Olivier Jacot-Guillarmod made a major contribution to the foundation of the Court, the 10th anniversary of which we celebrate this year.

THE PRIORITIES OF THE "NEW" COURT

Mr Luzius Wildhaber
President of the European Court of Human Rights from 1998 to 2007

When I was elected President of the "new" Court in 1998 I had already been a judge on the "old" Court for seven years. That experience was of course immensely valuable and I thoroughly enjoyed working with my colleagues and friends on that Court.

In retrospect, I would say that probably no sort of experience or exposure to the Strasbourg system could fully have prepared the Court's leadership for the challenges of steering the "new" Court through the first years of its existence. Let me emphasise four points of priority for the "new" Court.

One was the steady, inexorable increase of the workload. The new Court had to "hit the ground running". From one day to the next the old system ceased to exist. We found ourselves with a docket of some 7,000 cases, some of which were difficult and time-consuming, and were immediately faced with a rapidly growing inflow of cases. It is not to belittle the real progress made in adopting Protocol No. 11 to say that the size of the task had been clearly underestimated. Very soon some of us drew attention to the need for reflection on further reform, the "reform of the reform". We organised the first major conference on reform in mid-2000, and the topic has not left the Court ever since.

The second priority was continuity. The "new" Court followed in its activity the existing case-law, except where the doctrine of an evolutive interpretation of Convention guarantees or societal changes or the novelty or dimensions of some new problem impelled it to tread new paths. I have always felt a strong responsibility to ensure that the achievements of the "old" Court's first 40 – and the Commission's 45 – years of existence were not lost in the transition to the new system. There is nothing surprising in this. It would not have been very professional if the "new" Court had behaved differently, and neither Protocol No. 11 nor the member States gave it a mandate to give an abruptly different content to the Convention guarantees.

A third priority was to maintain a dialogue with the domestic supreme and constitutional courts. The need for this was particularly obvious, since the "new" Court was settled in Strasbourg on a permanent basis. In the "old" Court this could be achieved more easily with the help of those judges who were at the same time also members of national courts. In the "new" Court I felt it was important

to accept the invitations of supreme and constitutional courts in order to explain (as a rule together with the national judge) the Convention system, to encourage the domestic courts to face up to and accept their responsibilities, and to explore ways of further improving human rights protection.

Last but not least, perhaps the most important challenge that I faced in those early days was to oversee the welding into a collegiate body of 39 judges – soon 40 and more – from very different cultures and professional backgrounds. I am pleased to say that very soon this heterogeneous mixture of former judges, academics, practising lawyers, senior public servants and ambassadors developed its own *esprit de corps* with a shared and deep-felt commitment to the goals fixed by the Convention. I was privileged and am proud to have been their President.

Statistics

Violation by Article and by Country

From 01.11.1998 to 01.11.2008

1998-2008	Total number of judgments	Judgments finding at least one violation	Judgments finding no violation	Friendly settlements / Striking out judgments	Other judgments**	Right to life - deprivation of life	Lack of effective investigation	Inhuman or degrading treatment	Lack of effective investigation	Prohibition of torture	Prohibition of slavery / forced labour	Right to liberty and security	Right to a fair trial	Length of proceedings	No punishment without law	Right to respect for private and family life	Freedom of thought, conscience and religion	Freedom of expression	Freedom of assembly and association	Right to marry	Right to an effective remedy	Prohibition of discrimination	Protection of property	Right to education	Right to free elections	Right not to be tried or punished twice	Other Articles of the Convention
	Total	Total	Total	Total	Total	2	2	3	3	3	4	5	6	6	7	8	9	10	11	12	13	14	P1-1	P1-2	P1-3	P7-4	
Albania	11	9	1		1				1				8	2		1					4		4				
Andorra	4	2		1	1								1									1					
Armenia	8	8											5					1	3						1		2
Austria	175	140	12	17	6				1			3	50	59		11	1	23	1		7	10				3	
Azerbaijan	16	13		2	1			1	1	1			6	2					3		3		3				1
Belgium	95	75	8	12					3			5	24	51		5		2			6						1
Bosnia Herzegovina	6	6							1			1	3			1					1		2				
Bulgaria	218	202	7	4	5	7	8		28	11		176	28	88		15	3	4	8		61	4	16				2
Croatia	151	117	5	26	3				4	1			38	66		5					21	1	8				
Cyprus	48	40	2	3	3				2			1	5	29	1	4		1			7	2	3		1		1
Czech Republic	141	127	4	8	2							10	39	76		12		1	1		12	2	6				
Denmark	22	5	6	11								1		2		1			1								
Estonia	17	14	2	1					1			6	4	3	3						1						
Finland	95	67	18	9	1				1				25	27		12		5			4		2				
France	613	489	60	50	14	3	2	1	8		1	27	200	251	2	14		13	1		25	8	17				4
Georgia	24	17	6	1					3	4		5	5	3		1	1	1			4	1	2		1		1
Germany	94	62	21	9	2				1			11	10	30		13		1			3	8	1				
Greece	428	381	8	19	20	3	3		8	3		6	81	265		2	5	6	4		68	4	46		2		
Hungary	156	147	3	6					1	2		5	2	132	1	1		1	2		1						2
Iceland	8	6		2								1	4										1				
Ireland	12	7	4	1								2	4	4							3						
Italy	1789	1386	29	332	42				3	1		20	208	992		97		3	3		59	1	270		15		15
Latvia	34	28	3	3					3			20	5	6	1	12	2	2	1		2				3		5
Liechtenstein	4	4										1	1	1				1			1						
Lithuania	41	30	5	6		1	1		2			16	8	9		7						2	3				
Luxembourg	25	21	2	2			1						5	13		3		2	1		3	1	1				
Malta	21	17	1		3							6	3	5		1		1				2	3				

Violation by Article and by Country

From 01.11.1998 to 01.11.2008

1998-2008	Total number of judgments	Judgments finding at least one violation	Judgments finding no violation	Friendly settlements / Striking out judgments	Other judgments**	Right to life - deprivation of life	Lack of effective investigation	Inhuman or degrading treatment Prohibition of torture	Lack of effective investigation	Prohibition of slavery / forced labour	Right to liberty and security	Right to a fair trial	Length of proceedings	No punishment without law	Right to respect for private and family life	Freedom of thought, conscience and religion	Freedom of expression	Freedom of assembly and association	Right to marry	Prohibition of discrimination	Right to an effective remedy	Protection of property	Right to education	Right to free elections	Right not to be tried or punished twice	Other Articles of the Convention
	Total	Total	Total	Total	Total	2	2	3	3	3	4	5	6	6	7	8	9	10	11	12	13	14	P1-1	P1-2	P1-3	P7-4	
Moldova	127	118	1	2	6			4	21	7		38	71	5		6	2	13	2		17		60				8
Monaco	0																										
Montenegro	0																										
Netherlands	71	41	13	12	5		3	1	7			7	7	5		11		3			1	2					
Norway	19	15	4										8	2		1		4						1			
Poland	601	520	36	40	5		1		2	1		193	33	293		57		9	1		18	2	13				2
Portugal	151	93	2	54	2							2	10	60		3		7			1	1	14				
Romania	425	379	11	21	14			1	9	12		23	225	44	1	21		6	2		4	9	241		1		7
Russia	579	544	19	11	5	47	49	15	96	16		138	363	73		21	2	10	6		87	1	302	1	2	1	43
San Marino	11	8		2	1								7	2			1						1				
Serbia	20	20										3	6	10		4		2			9		5				
Slovakia	162	135	5	20	2	1						15	11	105		7		5			13	1	4				
Slovenia	219	210	6	3			1		2	1		2	1	205		1					195						
Spain	39	28	9	1	1					1		2	13	6	1	3		1									1
Sweden	42	18	6	18		1			1			1	6	9		1		1	1		2		4				
Switzerland	44	36	6	2			1					8	10	4		8		6									
"The former Yugoslav Republic of Macedonia"	42	38	2	2						4			7	26							4		3				
Turkey	1857	1605	34	203	15	63	114	19	142	43		329	513	240	4	43	1	166	26		176	2	446	3	5		27
Ukraine	449	443	3	2	1	1	2	1	19	6		10	313	89		11	3	3	1		94		221		2		3
United Kindgom	289	185	40	60	4	1	12		7			42	64	19		37		2	2	3	23	30	2		3		1
Sub Total		**7856**	**404**	**978**	**165**	**128**	**198**	**43**	**378**	**114**	**1**	**1136**	**2440**	**3313**	**14**	**453**	**21**	**306**	**70**	**3**	**940**	**95**	**1704**	**5**	**36**	**4**	**126**
Total				**9398***																							

** Five judgments concern two Countries : Turkey & Denmark, Moldova & Russia, Georgia & Russia, Romania & Hungary and Romania & United Kingdom*

***Other judgments: just satisfaction, revision judgments, preliminary objections and lack of jurisdiction*

Workload and output

From 01.11.1998 to 01.11.2008

State	Applications allocated to a decision body											
	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	TOTAL
Albania	-	1	4	3	15	17	13	45	52	54	63	**267**
Andorra	-	1	3	2	-	2	1	5	8	4	1	**27**
Armenia	-	-	-	-	7	67	96	110	98	614	89	**1081**
Austria	20	227	244	230	309	322	304	298	344	329	305	**2932**
Azerbaijan	-	-	-	-	-	236	151	175	221	708	295	**1786**
Belgium	14	136	77	108	139	117	126	173	107	124	137	**1258**
Bosnia and Herzegovina	-	-	-	-	5	59	135	209	243	708	869	**2228**
Bulgaria	18	196	301	403	461	515	738	820	748	821	756	**5777**
Croatia	8	104	87	116	666	666	698	553	640	557	509	**4604**
Cyprus	1	17	16	20	47	36	46	66	56	63	53	**421**
Czech Republic	8	151	199	367	329	629	1070	1267	2466	808	643	**7937**
Denmark	9	56	56	52	86	75	86	72	68	45	59	**664**
Estonia	1	29	46	89	89	132	138	165	184	154	139	**1166**
Finland	23	145	109	106	185	260	244	243	262	269	230	**2076**
France	64	871	1031	1118	1605	1482	1735	1821	1831	1552	2550	**15660**
Georgia	-	-	7	22	29	35	48	72	105	162	1029	**1509**
Germany	50	535	594	717	1024	1009	1536	1592	1601	1485	1407	**11550**
Greece	9	144	123	192	311	355	274	365	371	384	358	**2886**
Hungary	7	93	163	172	307	332	398	644	423	528	365	**3432**
Iceland	3	1	4	3	6	10	6	6	12	9	6	**66**
Ireland	4	18	18	16	45	29	32	45	40	45	41	**333**
Italy	302	881	865	587	1303	1352	1482	847	931	1350	1642	**11542**
Latvia	4	29	79	125	208	133	195	233	268	235	223	**1732**
Liechtenstein	-	2	3	-	3	3	5	4	1	5	7	**33**
Lithuania	9	76	183	151	530	362	455	267	204	227	217	**2681**
Luxemburg	4	12	15	11	25	21	13	28	32	32	30	**223**
Malta	-	6	3	3	4	4	8	13	16	17	9	**83**
Moldova	4	33	63	44	245	238	344	594	517	887	996	**3965**
Monaco	-	-	-	-	-	-	-	1	4	10	2	**17**
Montenegro	-	-	-	-	-	-	-	-	13	134	106	**253**
Netherlands	19	206	175	200	317	278	350	410	397	365	324	**3041**
Norway	2	20	30	49	48	51	83	58	70	62	64	**537**
Poland	33	692	773	1755	4026	3647	4314	4563	3975	4211	3718	**31707**
Portugal	6	112	98	140	142	148	114	221	215	133	116	**1445**
Romania	16	293	638	542	1955	2160	3218	3103	3310	3171	4598	**23004**
Russia	52	971	1322	2104	3986	4728	5824	8069	10132	9497	8161	**54846**
San Marino	1	1	1	4	6	2	-	4	2	1	3	**25**
Serbia	-	-	-	-	-	1	453	660	595	1154	875	**3738**
Slovakia	5	163	282	343	406	349	403	442	487	347	407	**3634**
Slovenia	6	87	55	206	269	251	271	343	1338	1012	1242	**5080**
Spain	20	227	284	807	799	454	420	495	361	309	317	**4493**
Sweden	36	175	233	246	294	262	397	449	371	360	275	**3098**
Switzerland	22	156	187	162	213	161	201	230	282	236	219	**2069**
"The former Yugoslav Republic of Macedonia"	-	16	18	34	90	98	118	229	295	454	317	**1669**
Turkey	73	652	734	1058	3861	3546	3670	2488	2328	2830	3323	**24563**
Ukraine	44	431	727	1057	2820	1857	1533	1869	2482	4502	4144	**21466**
United Kingdom	76	442	625	479	986	687	744	1003	843	886	1137	**7908**
Total	**973**	**8408**	**10475**	**13843**	**28201**	**27178**	**32490**	**35369**	**39349**	**41850**	**42376**	**280512**

Minor discrepancies in the totals of applications pending at the end of a year are caused by the operation of the Court's database and reporting tools which do not provide for an automatic reporting option, in other words, reporting slightly overlaps into the next reference period.

From 01.11.1998 to 01.11.2008

State	Applications declared inadmissible or struck off											
	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	TOTAL
Albania	-	2	1	1	3	11	12	17	28	22	12	**109**
Andorra	-	1	1	4	-	1	-	2	9	3	2	**23**
Armenia	-	-	-	-	-	28	24	62	95	44	33	**286**
Austria	4	153	227	208	371	401	253	208	150	272	253	**2500**
Azerbaijan	-	-	-	-	-	45	200	120	57	84	217	**723**
Belgium	1	29	30	79	124	118	135	192	110	105	84	**1007**
Bosnia and Herzegovina	-	-	-	-	-	-	46	71	149	254	199	**719**
Bulgaria	5	57	93	232	394	293	298	344	832	587	350	**3485**
Croatia	1	32	81	75	338	349	580	477	352	745	640	**3670**
Cyprus	-	5	13	14	44	11	2	49	64	27	30	**259**
Czech Republic	2	61	75	267	437	280	399	420	1264	1080	1281	**5566**
Denmark	3	57	47	50	40	65	88	86	96	73	43	**648**
Estonia	-	7	19	24	57	138	70	82	88	127	130	**742**
Finland	3	85	125	123	151	97	191	256	187	253	375	**1846**
France	3	280	626	892	1254	1451	1678	1442	1374	1549	2496	**13045**
Georgia	-	-	2	3	13	24	17	48	33	40	16	**196**
Germany	8	331	642	528	748	462	914	1386	1121	1690	1226	**9056**
Greece	1	70	99	96	134	171	253	349	237	298	210	**1918**
Hungary	3	53	67	86	198	293	337	220	302	323	294	**2176**
Iceland	-	3	3	6	2	5	6	9	7	6	8	**55**
Ireland	-	6	18	24	43	31	16	36	53	40	24	**291**
Italy	8	255	277	265	1126	1009	1178	838	580	796	365	**6697**
Latvia	2	11	24	58	102	152	115	92	75	208	102	**941**
Liechtenstein	-	1	3	1	1	3	2	6	-	3	2	**22**
Lithuania	4	23	72	150	166	199	586	444	169	208	192	**2213**
Luxemburg	1	8	25	11	11	28	3	16	17	26	25	**171**
Malta	-	2	7	1	2	-	4	12	10	4	9	**51**
Moldova	1	6	48	23	31	104	79	302	248	201	347	**1390**
Monaco	-	-	-	-	-	-	-	-	1	1	12	**14**
Montenegro	-	-	-	-	-	-	-	-	-	-	0	**0**
Netherlands	4	121	170	218	278	237	339	440	333	335	267	**2742**
Norway	-	11	33	54	20	62	44	53	61	70	65	**473**
Poland	14	358	741	1411	2469	1702	2344	6465	5816	3966	3135	**28421**
Portugal	1	22	72	72	108	252	102	117	124	169	65	**1104**
Romania	1	33	217	536	508	700	1200	2036	2323	2536	3357	**13447**
Russia	4	348	916	1253	2223	3207	3704	5262	4856	4364	2650	**28787**
San Marino	-	1	3	2	1	2	5	2	3	1	6	**26**
Serbia	-	-	-	-	-	-	-	384	421	529	283	**1617**
Slovakia	3	42	102	159	366	277	353	283	130	286	361	**2362**
Slovenia	-	25	37	78	72	62	198	131	226	159	650	**1638**
Spain	7	130	228	231	1345	377	204	426	284	408	337	**3977**
Sweden	7	102	137	110	350	303	366	391	435	370	335	**2906**
Switzerland	2	94	191	210	182	108	170	178	170	165	155	**1625**
"The former Yugoslav Republic of Macedonia"	-	9	16	13	16	57	51	62	66	60	227	**577**
Turkey	8	153	394	385	1638	1635	1817	1366	3167	1573	1192	**13328**
Ukraine	10	310	431	510	1763	1665	1246	1698	1076	2606	1181	**12496**
United Kingdom	8	223	466	529	737	863	721	732	963	403	975	**6620**
Total	**119**	**3520**	**6779**	**8992**	**17866**	**17278**	**20350**	**27612**	**28162**	**27069**	**24218**	**181965**

From 01.11.1998 to 01.11.2008

State	Number of judgments delivered*										
	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	TOTAL
Albania	0	0	0	0	0	1	1	2	6	1	**11**
Andorra	1	0	0	0	0	1	0	1	0	1	**4**
Armenia	-	-	-	0	0	0	0	0	5	3	**8**
Austria	3	21	18	20	19	17	22	21	23	11	**175**
Azerbaijan	-	-	-	0	0	0	0	3	7	6	**16**
Belgium	2	2	5	14	8	15	14	7	15	13	**95**
Bosnia and Herzegovina	-	-	-	0	0	0	0	1	3	2	**6**
Bulgaria	1	3	3	3	11	27	23	45	53	49	**218**
Croatia	0	0	5	9	6	33	26	22	31	19	**151**
Cyprus	1	4	2	6	3	3	1	15	7	6	**48**
Czech Republic	1	4	2	4	6	28	33	39	11	13	**141**
Denmark	0	6	2	2	2	3	3	2	2	0	**22**
Estonia	0	1	1	1	3	1	4	1	3	2	**17**
Finland	0	8	4	5	5	12	13	17	26	5	**95**
France	23	73	45	75	94	75	60	96	48	24	**613**
Georgia	0	0	0	0	0	2	3	5	8	6	**24**
Germany	3	3	17	9	12	6	16	10	12	6	**94**
Greece	6	21	21	25	28	40	105	55	65	62	**428**
Hungary	1	1	3	3	16	20	17	31	24	40	**156**
Iceland	0	2	0	0	2	2	0	0	2	0	**8**
Ireland	0	3	1	1	2	2	3	0	0	0	**12**
Italy	71	396	413	391	148	47	79	103	67	74	**1789**
Latvia	0	0	1	2	1	3	1	10	12	4	**34**
Liechtenstein	1	0	0	0	0	1	1	1	0	0	**4**
Lithuania	0	5	2	5	4	2	5	7	5	6	**2651**
Luxemburg	0	1	2	1	4	1	1	2	7	6	**25**
Malta	2	1	0	0	1	1	2	8	1	5	**21**
Moldova	0	0	1	0	0	10	14	20	60	22	**127**
Monaco	-	-	-	-	-	-	0	0	0	0	**0**
Montenegro	-	-	-	-	-	-	-	-	0	0	**0**
Netherlands	2	6	7	11	7	10	10	7	10	1	**71**
Norway	2	1	1	0	5	0	0	1	5	4	**19**
Poland	3	19	20	26	67	79	49	115	111	112	**601**
Portugal	13	20	26	33	17	7	10	5	10	10	**151**
Romania	2	3	1	27	28	19	33	73	93	146	**425**
Russia	0	0	0	2	5	15	83	102	192	180	**579**
San Marino	1	2	0	0	4	2	1	0	1	0	**11**
Serbia	-	-	-	-	-	0	0	1	14	5	**20**
Slovakia	2	6	8	7	27	14	29	35	23	11	**162**
Slovenia	0	2	1	1	0	0	1	190	15	9	**219**
Spain	3	4	2	3	9	6	0	5	5	2	**39**
Sweden	0	1	3	7	3	6	7	8	7	0	**42**
Switzerland	0	7	8	4	1	0	5	9	7	3	**44**
"The former Yugoslav Republic of Macedonia"	0	0	1	1	0	0	4	8	17	11	**42**
Turkey	19	39	229	105	123	171	290	334	331	216	**1857**
Ukraine	0	0	1	1	7	14	120	120	109	77	**449**
United Kingdom	14	30	33	40	25	23	18	23	50	33	**289**
Total	**177**	**695**	**889**	**844**	**703**	**718**	**1105**	**1560**	**1503**	**1205**	

* Set up on 1 November 1998, the "new" Court delivered its first judgment on 21 January 1999.

Appendix 1

List of participants

List of participants

Organisation / Association	Last name Nom	Function Fonction
Access to Information Programme (BG)	KASHUMOV Alexander	Head of Legal Team
The AIRE Centre (UK)	HARBY Catharina	
Amnesty International (UK)	HEINE Jill	Legal Adviser
APADOR-CH (RO)	HATNEANU Diana-Olivia	Executive Director
Armenian Helsinki Committee (ARM)	GRIGORYAN Vahe	
Bulgarian Helsinki Committee (BG)	ROUSSINOVA Polina	Lawyer
Bulgarian Lawyers for Human Rights (BG)	RAZBOINIKOVA Sofia	Lawyer
Center for Human Rights Union "Article 42 of the Constitution"(GEO)	KOBAKHIDZE Manana GABISONIA Tamar	Head of the Board Lawyer
Committee on the Administration of Justice(UK)	GILMORE Aideen	Deputy Director
Council of Bars and Law Societies of Europe (B)	PETTITI Laurent	Président du comité des droits de l'homme du CCBE
European Criminal Bar Association (UK)	MITCHELL Jonathan	UK Barrister, ECBA Advisory Board Member
European Human Rights Advocacy Centre (UK)	EVANS Joanna	
European Roma Rights Centre (H)	DOBRUSHI Andi	Senior Staff Attorney
Fundación Secretariado Gitano (E)	DEL RÍO Raquel	Lawyer, Equal Treatment Area
Greek Helsinki Monitor and Minority Rights Group (GR)	DIMITRAS Panayote PAPANIKOLATOS Nafsika	Spokesperson Spokesperson
Helsinki Foundation for Human Rights (PL)	BODNAR Adam	Member of the Board Head of legal division
Human Rights Watch (UK)	WARD Benjamin	Associate Director, Europe & Central Asia Division
Institut des droits de l'homme du barreau de Paris (F)	PETTITI Christophe	Avocat, Secrétaire Général
Interights (UK)	COOMBER Andrea COJOCARIU Constantin	Legal Director Lawyer
International Commission of Jurists (CH)	PILLAY Róisín	Legal Officer for Europe
International Lesbian and Gay Association (B)	WINTEMUTE Robert	Professor of Human Rights Law
International Protection Centre (RU)	MOSKALENKO Karinna	President
JURIX (RU)	SOBOLEVA Anita	Chief Legal Counsel
Justice (RU)	METCALFE Eric	Barrister and Director of Human Rights Policy
Kurdish Human Rights Project (UK)	YILDIZ Mahmut Kerim	Executive Director
Lawyers for Human Rights (MD)	GRIBINCEA Vladislav	Programme Director
Liberty (UK)	WELCH James	Legal Director
Mass Media Defence Center (RU)	ARAPOVA Galina	Director, senior media lawyer
Media Law Institute (UKR)	SHEVCHENKO Taras	Director
« Memorial » Human Rights Centre (RU)	AVETISYAN Grigor KOROTEEV Kirill	Lawyer Lawyer
Moscow Media Law and Policy Institute (RU)	RICHTER Andrei	
Ordre des Avocats au Barreau de Strasbourg (F)	LUTZ-SORG Cédric	Ancien Bâtonnier, membre du Conseil de l'Ordre des Avocats au Barreau de Strasbourg

Organisation / Association	Last name Nom	Function Fonction
Open society Justice Initiative (USA)	GOLDSTON James FERSCHTMAN Maxim SKILBECK Rupert PAVLI Darian LUZIN Vladimir	Executive Director Senior Legal Advisor Litigation Director Legal Officer Consultant
PROMO-LEX Association (MD)	MANOLE Olga	Organisational Development Department Manager, Legal Program Coordinator
Regroupement Droits de l'Homme de la Conférence des OING (F)	GUARNERI Giuseppe	Représentant de la conférence des OING
Stichting Russian Justice Initiative (RU)	LEMAITRE Roemer	Legal Director
Sutyazhnik (RU)	BURKOV Anton	Lawyer
Unione forense per la tutela dei diritti umani (I)	SACCUCCI Andrea LANA Anton Giulio	Lawyer Lawyer

Appendix 2

Protocol No. 11

European Treaty Series - No. 155

Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, restructuring the control machinery established thereby

Strasbourg, 11.V.1994

The member States of the Council of Europe, signatories to this Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention"),

Considering the urgent need to restructure the control machinery established by the Convention in order to maintain and improve the efficiency of its protection of human rights and fundamental freedoms, mainly in view of the increase in the number of applications and the growing membership of the Council of Europe;

Considering that it is therefore desirable to amend certain provisions of the Convention with a view, in particular, to replacing the existing European Commission and Court of Human Rights with a new permanent Court;

Having regard to Resolution No. 1 adopted at the European Ministerial Conference on Human Rights, held in Vienna on 19 and 20 March 1985;

Having regard to Recommendation 1194 (1992), adopted by the Parliamentary Assembly of the Council of Europe on 6 October 1992;

Having regard to the decision taken on reform of the Convention control machinery by the Heads of State and Government of the Council of Europe member States in the Vienna Declaration on 9 October 1993,

Have agreed as follows:

Article 1
The existing text of Sections II to IV of the Convention (Articles 19 to 56) and Protocol No. 2 conferring upon the European Court of Human Rights competence to give advisory opinions shall be replaced by the following Section II of the Convention (Articles 19 to 51):

"Section II – European Court of Human Rights

Article 19 – Establishment of the Court
To ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the protocols thereto, there shall be set up a European Court of Human Rights, hereinafter referred to as "the Court". It shall function on a permanent basis.

Article 20 – Number of judges
The Court shall consist of a number of judges equal to that of the High Contracting Parties.

Article 21 – Criteria for office

1. The judges shall be of high moral character and must either possess the qualifications required for appointment to high judicial office or be jurisconsults of recognised competence.
2. The judges shall sit on the Court in their individual capacity.
3. During their term of office the judges shall not engage in any activity which is incompatible with their independence, impartiality or with the demands of a full time office; all questions arising from the application of this paragraph shall be decided by the Court.

Article 22 – Election of judges

1. The judges shall be elected by the Parliamentary Assembly with respect to each High Contracting Party by a majority of votes cast from a list of three candidates nominated by the High Contracting Party.
2. The same procedure shall be followed to complete the Court in the event of the accession of new High Contracting Parties and in filling casual vacancies.

Article 23 – Terms of office

1. The judges shall be elected for a period of six years. They may be re elected. However, the terms of office of one half of the judges elected at the first election shall expire at the end of three years.
2. The judges whose terms of office are to expire at the end of the initial period of three years shall be chosen by lot by the Secretary General of the Council of Europe immediately after their election.
3. In order to ensure that, as far as possible, the terms of office of one half of the judges are renewed every three years, the Parliamentary Assembly may decide, before proceeding to any subsequent election, that the term or terms of office of one or more judges to be elected shall be for a period other than six years but not more than nine and not less than three years.
4. In cases where more than one term of office is involved and where the Parliamentary Assembly applies the preceding paragraph, the allocation of the terms of office shall be effected by a drawing of lots by the Secretary General of the Council of Europe immediately after the election.
5. A judge elected to replace a judge whose term of office has not expired shall hold office for the remainder of his predecessor's term.
6. The terms of office of judges shall expire when they reach the age of 70.
7. The judges shall hold office until replaced. They shall, however, continue to deal with such cases as they already have under consideration.

Article 24 – Dismissal

No judge may be dismissed from his office unless the other judges decide by a majority of two thirds that he has ceased to fulfil the required conditions.

Article 25 – Registry and legal secretaries

The Court shall have a registry, the functions and organisation of which shall be laid down in the rules of the Court. The Court shall be assisted by legal secretaries.

Article 26 – Plenary Court

The plenary Court shall

a - elect its President and one or two Vice Presidents for a period of three years; they may be re elected;

b - set up Chambers, constituted for a fixed period of time;

c - elect the Presidents of the Chambers of the Court; they may be re elected;

d - adopt the rules of the Court; and
e - elect the Registrar and one or more Deputy Registrars.

Article 27 – Committees, Chambers and Grand Chamber
1. To consider cases brought before it, the Court shall sit in committees of three judges, in Chambers of seven judges and in a Grand Chamber of seventeen judges. The Court's Chambers shall set up committees for a fixed period of time.
2. There shall sit as an ex officio member of the Chamber and the Grand Chamber the judge elected in respect of the State Party concerned or, if there is none or if he is unable to sit, a person of its choice who shall sit in the capacity of judge.
3. The Grand Chamber shall also include the President of the Court, the Vice Presidents, the Presidents of the Chambers and other judges chosen in accordance with the rules of the Court. When a case is referred to the Grand Chamber under Article 43, no judge from the Chamber which rendered the judgment shall sit in the Grand Chamber, with the exception of the President of the Chamber and the judge who sat in respect of the State Party concerned.

Article 28 – Declarations of inadmissibility by committees
A committee may, by a unanimous vote, declare inadmissible or strike out of its list of cases an individual application submitted under Article 34 where such a decision can be taken without further examination. The decision shall be final.

Article 29 – Decisions by Chambers on admissibility and merits
1. If no decision is taken under Article 28, a Chamber shall decide on the admissibility and merits of individual applications submitted under Article 34.
2. A Chamber shall decide on the admissibility and merits of inter State applications submitted under Article 33.
3. The decision on admissibility shall be taken separately unless the Court, in exceptional cases, decides otherwise.

Article 30 – Relinquishment of jurisdiction to the Grand Chamber
Where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or the protocols thereto, or where the resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court, the Chamber may, at any time before it has rendered its judgment, relinquish jurisdiction in favour of the Grand Chamber, unless one of the parties to the case objects.

Article 31 – Powers of the Grand Chamber
The Grand Chamber shall
a - determine applications submitted either under Article 33 or Article 34 when a Chamber has relinquished jurisdiction under Article 30 or when the case has been referred to it under Article 43; and
b - consider requests for advisory opinions submitted under Article 47.

Article 32 – Jurisdiction of the Court
1. The jurisdiction of the Court shall extend to all matters concerning the interpretation and application of the Convention and the protocols thereto which are referred to it as provided in Articles 33, 34 and 47.
2. In the event of dispute as to whether the Court has jurisdiction, the Court shall decide.

Article 33 – Inter-State cases
Any High Contracting Party may refer to the Court any alleged breach of the provisions of the Convention and the protocols thereto by another High Contracting Party.

Article 34 – Individual applications
The Court may receive applications from any person, non governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.

Article 35 – Admissibility criteria
1. The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken.
2. The Court shall not deal with any individual application submitted under Article 34 that
a - is anonymous; or
b - is substantially the same as a matter that has already been examined by the Court or has already been submitted to another procedure of international investigation or settlement and contains no relevant new information.
3. The Court shall declare inadmissible any individual application submitted under Article 34 which it considers incompatible with the provisions of the Convention or the protocols thereto, manifestly ill founded, or an abuse of the right of application.
4. The Court shall reject any application which it considers inadmissible under this Article. It may do so at any stage of the proceedings.

Article 36 – Third party intervention
1. In all cases before a Chamber or the Grand Chamber, a High Contracting Party one of whose nationals is an applicant shall have the right to submit written comments and to take part in hearings.
2. The President of the Court may, in the interest of the proper administration of justice, invite any High Contracting Party which is not a party to the proceedings or any person concerned who is not the applicant to submit written comments or take part in hearings.

Article 37 – Striking out applications
1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that
a - the applicant does not intend to pursue his application; or
b - the matter has been resolved; or
c - for any other reason established by the Court, it is no longer justified to continue the examination of the application.
However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the protocols thereto so requires.
2. The Court may decide to restore an application to its list of cases if it considers that the circumstances justify such a course.

Article 38 – Examination of the case and friendly settlement proceedings
1. If the Court declares the application admissible, it shall
a - pursue the examination of the case, together with the representatives of the parties, and if need be, undertake an investigation, for the effective conduct of which the States

concerned shall furnish all necessary facilities;

b - place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for human rights as defined in the Convention and the protocols thereto.

2. Proceedings conducted under paragraph 1.b shall be confidential.

Article 39 – Finding of a friendly settlement

If a friendly settlement is effected, the Court shall strike the case out of its list by means of a decision which shall be confined to a brief statement of the facts and of the solution reached.

Article 40 – Public hearings and access to documents

1. Hearings shall be public unless the Court in exceptional circumstances decides otherwise.
2. Documents deposited with the Registrar shall be accessible to the public unless the President of the Court decides otherwise.

Article 41 – Just satisfaction

If the Court finds that there has been a violation of the Convention or the protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.

Article 42 – Judgments of Chambers

Judgments of Chambers shall become final in accordance with the provisions of Article 44, paragraph 2.

Article 43 – Referral to the Grand Chamber

1. Within a period of three months from the date of the judgment of the Chamber, any party to the case may, in exceptional cases, request that the case be referred to the Grand Chamber.
2. A panel of five judges of the Grand Chamber shall accept the request if the case raises a serious question affecting the interpretation or application of the Convention or the protocols thereto, or a serious issue of general importance.
3. If the panel accepts the request, the Grand Chamber shall decide the case by means of a judgment.

Article 44 – Final judgments

1. The judgment of the Grand Chamber shall be final.
2. The judgment of a Chamber shall become final

a - when the parties declare that they will not request that the case be referred to the Grand Chamber; or

b - three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or

c - when the panel of the Grand Chamber rejects the request to refer under Article 43.

3. The final judgment shall be published.

Article 45 – Reasons for judgments and decisions

1. Reasons shall be given for judgments as well as for decisions declaring applications admissible or inadmissible.
2. If a judgment does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

Article 46 – Binding force and execution of judgments
1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.

Article 47 – Advisory opinions
1. The Court may, at the request of the Committee of Ministers, give advisory opinions on legal questions concerning the interpretation of the Convention and the protocols thereto.
2. Such opinions shall not deal with any question relating to the content or scope of the rights or freedoms defined in Section I of the Convention and the protocols thereto, or with any other question which the Court or the Committee of Ministers might have to consider in consequence of any such proceedings as could be instituted in accordance with the Convention.
3. Decisions of the Committee of Ministers to request an advisory opinion of the Court shall require a majority vote of the representatives entitled to sit on the Committee.

Article 48 – Advisory jurisdiction of the Court
The Court shall decide whether a request for an advisory opinion submitted by the Committee of Ministers is within its competence as defined in Article 47.

Article 49 – Reasons for advisory opinions
1. Reasons shall be given for advisory opinions of the Court.
2. If the advisory opinion does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.
3. Advisory opinions of the Court shall be communicated to the Committee of Ministers.

Article 50 – Expenditure on the Court
The expenditure on the Court shall be borne by the Council of Europe.

Article 51 – Privileges and immunities of judges
The judges shall be entitled, during the exercise of their functions, to the privileges and immunities provided for in Article 40 of the Statute of the Council of Europe and in the agreements made thereunder."

Article 2
1. Section V of the Convention shall become Section III of the Convention; Article 57 of the Convention shall become Article 52 of the Convention; Articles 58 and 59 of the Convention shall be deleted, and Articles 60 to 66 of the Convention shall become Articles 53 to 59 of the Convention respectively.
2. Section I of the Convention shall be entitled "Rights and freedoms" and new Section III of the Convention shall be entitled "Miscellaneous provisions". Articles 1 to 18 and new Articles 52 to 59 of the Convention shall be provided with headings, as listed in the appendix to this Protocol.
3. In new Article 56, in paragraph 1, the words ", subject to paragraph 4 of this Article," shall be inserted after the word "shall"; in paragraph 4, the words "Commission to receive petitions" and "in accordance with Article 25 of the present Convention" shall be replaced by the words "Court to receive applications" and "as provided in Article 34 of the Convention" respectively. In new Article 58, paragraph 4, the words "Article 63" shall be replaced by the words "Article 56".
4. The Protocol to the Convention shall be amended as follows
   a - the Articles shall be provided with the headings listed in the appendix to the present Protocol; and

b - in Article 4, last sentence, the words "of Article 63" shall be replaced by the words "of Article 56".

5 . Protocol No. 4 shall be amended as follows

a - the Articles shall be provided with the headings listed in the appendix to the present Protocol;

b - in Article 5, paragraph 3, the words "of Article 63" shall be replaced by the words "of Article 56"; a new paragraph 5 shall be added, which shall read

"Any State which has made a declaration in accordance with paragraph 1 or 2 of this Article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non governmental organisations or groups of individuals as provided in Article 34 of the Convention in respect of all or any of Articles 1 to 4 of this Protocol."; and

c - paragraph 2 of Article 6 shall be deleted.

6. Protocol No. 6 shall be amended as follows

a - the Articles shall be provided with the headings listed in the appendix to the present Protocol; and

b - in Article 4 the words "under Article 64" shall be replaced by the words "under Article 57".

7. Protocol No. 7 shall be amended as follows

a - the Articles shall be provided with the headings listed in the appendix to the present Protocol;

b - in Article 6, paragraph 4, the words "of Article 63" shall be replaced by the words "of Article 56"; a new paragraph 6 shall be added, which shall read

"Any State which has made a declaration in accordance with paragraph 1 or 2 of this Article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non governmental organisations or groups of individuals as provided in Article 34 of the Convention in respect of Articles 1 to 5 of this Protocol."; and

c - paragraph 2 of Article 7 shall be deleted.

8. Protocol No. 9 shall be repealed.

Article 3

1. This Protocol shall be open for signature by member States of the Council of Europe signatories to the Convention, which may express their consent to be bound by

a - signature without reservation as to ratification, acceptance or approval; or

b - signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.

2. The instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 4

This Protocol shall enter into force on the first day of the month following the expiration of a period of one year after the date on which all Parties to the Convention have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 3. The election of new judges may take place, and any further necessary steps may be taken to establish the new Court, in accordance with the provisions of this Protocol from the date on which all Parties to the Convention have expressed their consent to be bound by the Protocol.

Article 5

1. Without prejudice to the provisions in paragraphs 3 and 4 below, the terms of office of the judges, members of the Commission, Registrar and Deputy Registrar shall expire at the date of entry into force of this Protocol.
2. Applications pending before the Commission which have not been declared admissible at the date of the entry into force of this Protocol shall be examined by the Court in accordance with the provisions of this Protocol.
3. Applications which have been declared admissible at the date of entry into force of this Protocol shall continue to be dealt with by members of the Commission within a period of one year thereafter. Any applications the examination of which has not been completed within the aforesaid period shall be transmitted to the Court which shall examine them as admissible cases in accordance with the provisions of this Protocol.
4. With respect to applications in which the Commission, after the entry into force of this Protocol, has adopted a report in accordance with former Article 31 of the Convention, the report shall be transmitted to the parties, who shall not be at liberty to publish it. In accordance with the provisions applicable prior to the entry into force of this Protocol, a case may be referred to the Court. The panel of the Grand Chamber shall determine whether one of the Chambers or the Grand Chamber shall decide the case. If the case is decided by a Chamber, the decision of the Chamber shall be final. Cases not referred to the Court shall be dealt with by the Committee of Ministers acting in accordance with the provisions of former Article 32 of the Convention.
5. Cases pending before the Court which have not been decided at the date of entry into force of this Protocol shall be transmitted to the Grand Chamber of the Court, which shall examine them in accordance with the provisions of this Protocol.
6. Cases pending before the Committee of Ministers which have not been decided under former Article 32 of the Convention at the date of entry into force of this Protocol shall be completed by the Committee of Ministers acting in accordance with that Article.

Article 6

Where a High Contracting Party had made a declaration recognising the competence of the Commission or the jurisdiction of the Court under former Article 25 or 46 of the Convention with respect to matters arising after or based on facts occurring subsequent to any such declaration, this limitation shall remain valid for the jurisdiction of the Court under this Protocol.

Article 7

The Secretary General of the Council of Europe shall notify the member States of the Council of

a - any signature;
b - the deposit of any instrument of ratification, acceptance or approval;
c - the date of entry into force of this Protocol or of any of its provisions in accordance with Article 4; and
d - any other act, notification or communication relating to this Protocol.

In witness whereof, the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 11th day of May 1994, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.

Appendix

Headings of articles to be inserted into the text of the Convention for the Protection of Human Rights and Fundamental Freedoms and its protocols*

Article 1	–	Obligation to respect human rights
Article 2	–	Right to life
Article 3	–	Prohibition of torture
Article 4	–	Prohibition of slavery and forced labour
Article 5	–	Right to liberty and security
Article 6	–	Right to a fair trial
Article 7	–	No punishment without law
Article 8	–	Right to respect for private and family life
Article 9	–	Freedom of thought, conscience and religion
Article 10	–	Freedom of expression
Article 11	–	Freedom of assembly and association
Article 12	–	Right to marry
Article 13	–	Right to an effective remedy
Article 14	–	Prohibition of discrimination
Article 15	–	Derogation in time of emergency
Article 16	–	Restrictions on political activity of aliens
Article 17	–	Prohibition of abuse of rights
Article 18	–	Limitation on use of restrictions on rights
[...]		
Article 52	–	Enquiries by the Secretary General
Article 53	–	Safeguard for existing human rights
Article 54	–	Powers of the Committee of Ministers
Article 55	–	Exclusion of other means of dispute settlement
Article 56	–	Territorial application
Article 57	–	Reservations
Article 58	–	Denunciation
Article 59	–	Signature and ratification

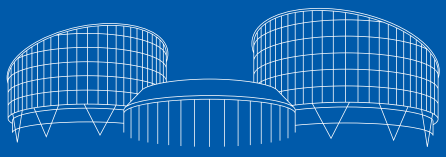
Protocol

Article 1	–	Protection of property
Article 2	–	Right to education
Article 3	–	Right to free elections
Article 4	–	Territorial application
Article 5	–	Relationship to the Convention
Article 6	–	Signature and ratification

Protocol No. 4

Article 1	–	Prohibition of imprisonment for debt
Article 2	–	Freedom of movement
Article 3	–	Prohibition of expulsion of nationals
Article 4	–	Prohibition of collective expulsion of aliens
Article 5	–	Territorial application
Article 6	–	Relationship to the Convention
Article 7	–	Signature and ratification

* Headings have already been added to new Articles 19 to 51 of the Convention by the present Protocol.



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