section 2

The Court Today

CHAPTER 4

Current Organization and Procedures

Organization

The Court is composed of a number of judges equal to that of the Contracting States. Judges are elected by the Parliamentary Assembly of the Council of Europe, which votes on a shortlist of three candidates put forward by the States. The term of office is nine years, and judges may not be re-elected. Their terms of office expire when they reach the age of 70, but they remain in office until replaced. Judges sit on the Court in their individual capacity and do not represent any State. They cannot engage in any activity that is incompatible with their independence or impartiality, or with the demands of full-time office.

The Plenary Court, comprising all members, elects the President, the two Vice-Presidents (who also preside over a Section), the three other Section Presidents and the Registrar and Deputy Registrar. The Rules of Court are adopted and amended by the Plenary Court.

The Court consists of five Sections, to one of which every judge is assigned. The Plenary Court determines the composition of the Sections, which is geographically and gender balanced and takes account of the different legal systems of the Contracting States. The composition of the Sections is changed every three years.

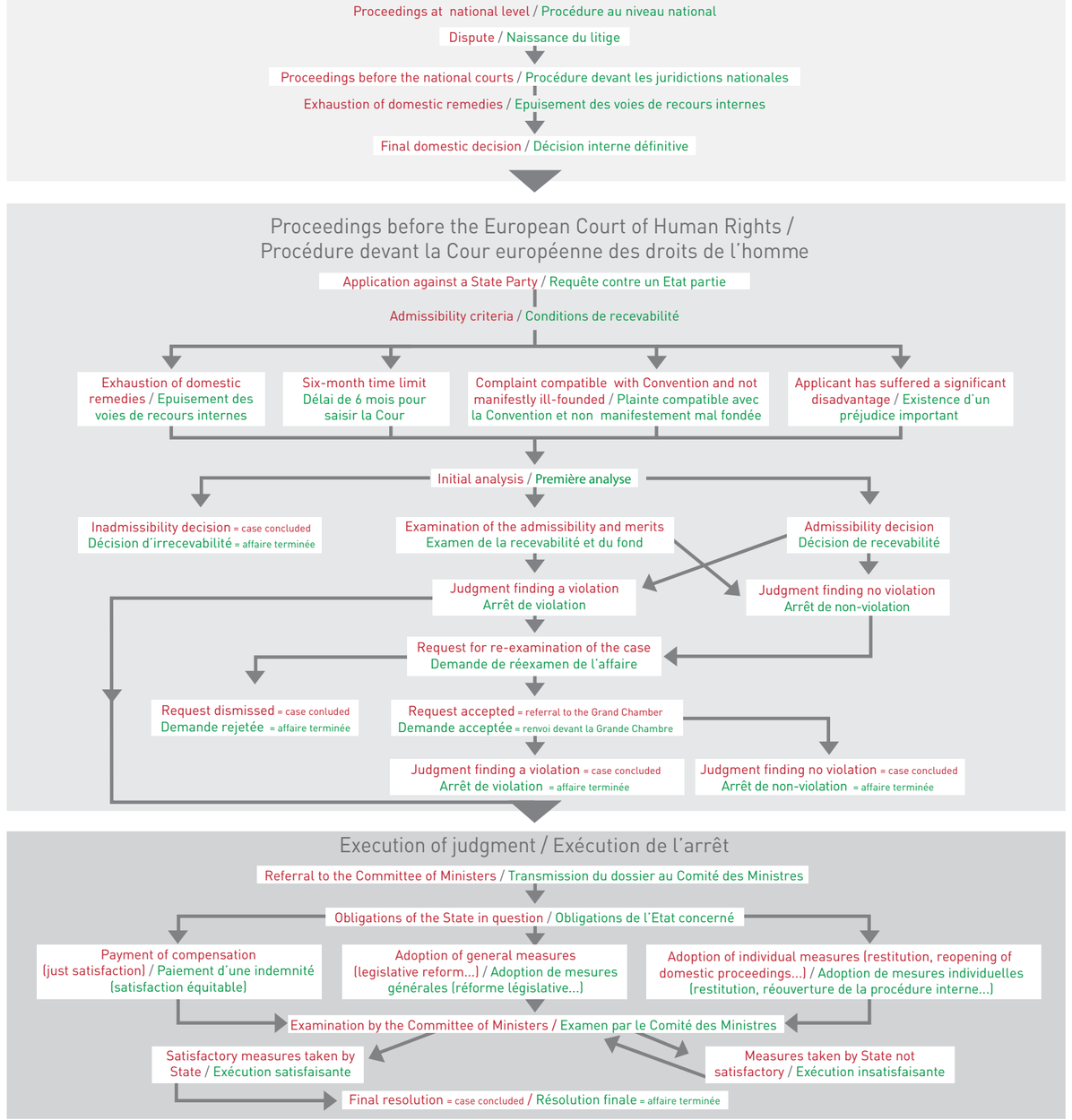
The Court may sit in four distinct formations: Single Judge, Committee, Chamber or Grand Chamber.

Single Judges

The Single-Judge formation is competent to declare an application inadmissible or strike it out of the list of cases when this can be done without further examination. The President of the Court decides on the number of judges to be appointed as Single Judges, the duration of the appointment and the Contracting States in relation to which they will operate. A judge cannot act as Single Judge in a case taken against the country in respect of which they have been elected to the Court.

As of 1 June 2010, when Protocol No. 14 took effect, 20 members of the Court had been appointed to this function. They continue to carry out their normal duties within their Sections. Each Single Judge is assisted by a non-judicial rapporteur, appointed by the President of the Court from among experienced Registry lawyers and operating under the President's authority.

The Life of an Application / Le cheminement d'une requête



This table provides a schematic view of the procedure only and does not purport to cover all situations (e.g. relinquishment of jurisdiction by a Chamber to the Grand Chamber; rule that Chamber judgment becomes automatically final after three months unless a request is made for referral to the Grand Chamber).

A COURT EXAMINING CASES FROM ARUBA TO TAHITI

The Court exercises jurisdiction over 47 States with a total population exceeding 800 million. The latter figure includes an unknown number of nationals of other countries (and stateless persons) who happen to fall 'within the jurisdiction' of one of the 47 by, for example, residing or seeking refuge there. Add also a vast number of legal entities, such as companies, church bodies and private associations, which may have a grievance against any one of those 47.

Surprising as it may appear to readers less familiar with its case-law, the Court has occasionally examined cases that relate to matters well beyond the Continent of Europe. It has scrutinized the conditions of a remand prisoner on the Caribbean island of Aruba (*Mathew v. the Netherlands*, 2005); it has verified whether the authorities in Tahiti violated the right of a visiting German Member of the European Parliament to express herself freely (*Piermont v. France*, 1995); it has considered whether Danish law applicable on Greenland was sufficiently clear to Greenpeace members trespassing on an area used for the American missile defence programme (*Custers and Others v. Denmark*, 2007); it has entertained complaints by Chilean and other crew members confined to their quarters on a vessel registered in Cambodia and apprehended by the French Navy off Cap Verde (*Medvedyev and Others v. France*, 2010); and currently the Court is examining complaints concerning the use of force by British soldiers in Iraq (*Al-Skeini and Others v. the United Kingdom*).

Left: *Hearing before a Grand Chamber.*

Below: *From the left, Vice-President Christos Rozakis, President Jean-Paul Costa, Vice-President Sir Nicolas Bratza and Section President Françoise Tulkens at a Grand Chamber hearing in 2010.*

Opposite: *Hearing in the case of* The former King of Greece and Others v. Greece *in 2000.*

Committees

Committees of three judges are set up within each Section. Their function is to dispose of inadmissible applications that have not been disposed of by a Single Judge and to give judgment in cases that can be decided on the basis of well-established case-law.

Chambers

Before Protocol No. 14 took effect the majority of the judgments of the Court were given by Chambers. These consist of seven judges and are constituted within each Section. The Section President and the judge elected in respect of the State concerned sit in each case.

Grand Chamber

The Grand Chamber of the Court is composed of 17 judges, who include, as ex officio members, the President, Vice-Presidents and Section Presidents. The Grand Chamber deals with cases that raise a serious question of the interpretation or application of the Convention, or a serious issue of general importance. A Chamber may relinquish jurisdiction in a case to the Grand Chamber at any stage in the procedure before judgment, as long as the parties consent.

When judgment has been delivered by a Chamber, any party may, within three months, request referral of the case to the Grand Chamber. Such requests are considered by a panel of five judges. Where a request is granted, the whole case is re-heard. Grand Chamber judgments are taken by a majority.

Procedures

Any Contracting State (inter-State application) or individual claiming to be a victim of a violation of the Convention (individual application) may lodge directly with the Court in Strasbourg an application alleging a breach by a Contracting State of one of the Convention rights. The procedure before the Court is adversarial and public. It is largely a written procedure. Hearings, which are held in only a small minority of cases, are public, unless the Chamber/Grand Chamber decides otherwise because of exceptional circumstances. Memorials and other documents filed

THE VISITORS' UNIT

The Visitors' Unit at the Court organizes study programmes (lasting one day or more) intended for judges, magistrates, lawyers and law students. Information visits are organized for groups that would like detailed information about the Court's activities, with priority given to groups connected with the legal professions.

The Visitors' Unit also organizes from a logistical point of view external events held on the Court's premises, such as seminars, competitions, prize awards, including the *Cérémonie du prix de la tolérance Marcel Rudloff*, the *Concours René Cassin* and the *Finale régionale du Concours des lycéens du Mémorial de Caen*.

In 2009 the Court welcomed more than 17,000 visitors from 130 countries.

President Gerard Wiarda addressing a group of Netherlands judges visiting the Court in 1986. To the right, Egbert Myjer, the current Netherlands judge at the Court.

with the Court's Registry by the parties are, in principle, accessible to the public.

Individual applicants may present their own cases, but they should be legally represented once the application has been communicated to the respondent State, and the Council of Europe has established a legal aid scheme for applicants who cannot afford legal representation. The official languages of the Court are English and French, but applications may be submitted in one of the official languages of the Contracting States.

Once the application has been formally communicated to the respondent State, one of the Court's official languages must be used, unless the President of the Chamber/Grand Chamber authorizes the continued use of the language of the application.

In appropriate circumstances the Court may indicate interim measures to be taken by the respondent State pending the determination of the case (see pages 83–4).

The Court may, in the interests of the proper administration of justice, invite or grant leave to any Contracting State that is not a party to the proceedings, or any person concerned who is not the applicant, to submit written comments and, in exceptional circumstances, to make representations at the hearing. A Contracting State whose national is an applicant in the case is entitled to intervene as of right (see page 76).

Throughout the process, negotiations aimed at securing a friendly settlement may be conducted through the Registrar. These negotiations are confidential. Between 1999 and 2009 3,381 applications were struck out following either a friendly settlement or a unilateral declaration by the respondent State. Some 344,000 applications were allocated to a judicial formation in that period.

The Handling of Applications

Each individual application is assigned to a Section where it will be dealt with by the appropriate judicial formation – a Single Judge, a three-judge Committee or a seven-judge Chamber. Inter-State applications are examined by a Chamber.

An individual application that clearly fails to meet one of the admissibility criteria is referred to a Single Judge. A draft decision is prepared by, or under the responsibility of, a non-judicial rapporteur and is then submitted to the judge. A decision of inadmissibility by a Single Judge is final. Those applications not rejected at the first stage – that is, those that require some further scrutiny – are referred to a Committee or a Chamber.

The judgment in a case that can be dealt with by applying well-established case-law will be delivered by a Committee. The procedure followed in such cases is simpler and lighter. Unlike the Chamber procedure, the presence of the national judge is not required, although the Committee may vote to replace one of its members by the judge elected in respect of the respondent State. Committee judgments require unanimity, and when this is not achieved the case will be referred to a Chamber, which will decide by a majority. A Committee judgment is final and binding, with no possibility of seeking to refer the case to the Grand Chamber, as is possible with Chamber judgments.

All final judgments of the Court are binding on the respondent States concerned, and responsibility for supervising the execution of judgments lies with the Committee of Ministers of the Council of Europe. The Committee of Ministers verifies whether the State in respect of which a violation of the Convention is found has taken adequate remedial measures, which may be specific or general, to comply with the Court's judgment (see Chapter 5).

Any judge who has taken part in the consideration of the case is entitled to append to the Chamber or Grand Chamber judgment a separate opinion, concurring or dissenting as appropriate, or a bare statement of dissent.

Advisory Opinions

The Court may, at the request of the Committee of Ministers, give advisory opinions on a limited number of legal questions concerning the interpretation of the Convention and its Protocols. Such opinions are given by the Grand Chamber and adopted by a majority vote. Only two advisory opinions have been given to date. These were unanimous and related to the procedure for the election to the Court of judges sitting in respect of Malta and Ukraine, respectively.

The Registry

The task of the Court's Registry is to provide legal and administrative support to the Court in the exercise of its judicial functions. It is therefore composed of lawyers, administrative and technical staff and translators. At the end of 2009 the Registry consisted of some 640 members of staff. Registry staff are members of the staff of the Council of Europe, the Court's parent organization, and are subject to the Council of Europe's regulations.

Registry lawyers discussing a case.

DRESS CODE*

23 November 1983

Dear Mr President

Although with age I have (thank God) become reasonably shockproof, I must say I have been rather disturbed by the attire of applicants' counsel appearing before us in the Dutch cases. Out of three only one, mercifully, wore a jacket (with a crew-neck pullover underneath), and one even sported an open checked shirt and blue jeans reminiscent of colourful Arizona. I am myself by no means an *arbiter elegantiarum*, but in such an attire as this I would not be allowed admittance even to my own club.

I understand that the Commission does not allow anyone to appear before it in such an attire and, quite frankly, I see no reason why we should do it ourselves. My own feeling is that if we do not want the European Court of Human Rights to become a European Court of Horrid Sights, we must do something about this before the present occurrence assumes the character of a precedent and the next bunch of counsel appear in a jogging suit. I quite appreciate that we should avoid unpalatable incidents in open court and I therefore advocate the formulation of some sort of rule or directive on the subject which would be known beforehand to all and sundry.

One does feel a little silly wearing a fur-trimmed blue stole opposite a member of one's own profession wearing blue jeans and a fancy top. One of us has to give in and I am sure it is not us who should take to wearing fancy tops (maybe with a sheriff's star) and blue jeans. It should, if anything, be the other way round.

I understand (this of course could be checked) that the rule in the Hague Court is that counsel has to appear before it in the same attire in which he would appear before his own national court and I do feel that this is quite a reasonable requirement. Surely it is not asking too much of counsel to expect him to treat us in the same manner as he would treat his own national court. In any case he should at least wear a jacket and a tie. Our self-respect demands it.

(The name of the judge has been withheld.)

About half the Registry's staff are employed on contracts of unlimited duration and may be expected to pursue a career in the Registry or in other parts of the Council of Europe. They are recruited on the basis of open competition, and all staff members of the Registry are required to adhere to strict conditions as to their independence and impartiality.

The head of the Registry (under the authority of the President of the Court) is the Registrar, who is elected by the Plenary Court. The Registrar is assisted by a Deputy Registrar, also elected by the Plenary Court. Each of the Court's five judicial Sections is assisted by a Section Registrar and a Deputy Section Registrar.

The principal function of the Registry is to process and prepare for adjudication applications lodged with the Court. The Registry's lawyers are divided into 32 case-processing divisions, each of which is assisted by an administrative team. The lawyers prepare files and analytical notes for the judges, and they correspond with the parties on procedural matters. They do not themselves decide cases. Cases are assigned to the different divisions on the basis of a knowledge of the language and legal system concerned. The documents prepared by the Registry for the Court are all drafted in one of its two official languages.

In addition to its processing divisions, the Registry has divisions dealing with the following activities: case management and working methods; information technology; case-law information and publications; research and library; just satisfaction; press and public relations; and internal administration (including a budget and finance office). It also has a central office, which handles mail, files and archives. There are two language divisions, whose main work is translating the Court's judgments into the second official language and verifying the linguistic quality of draft judgments before publication. Although the Convention provides that the functions and organization of the Registry shall be laid down in the Rules of Court, it remains the case that, as staff members of the Council of Europe, the members of the Registry come under the authority of the Council's Secretary General, who is in turn responsible to the Committee of Ministers, a political body. Whether this feature should be removed by a revision of the status of the Registry, making it responsible solely to the judicial function it serves, is frequently debated, but no consensus has yet been reached. The administrative autonomy of

THE COURT B.C. (BEFORE COMPUTERS)

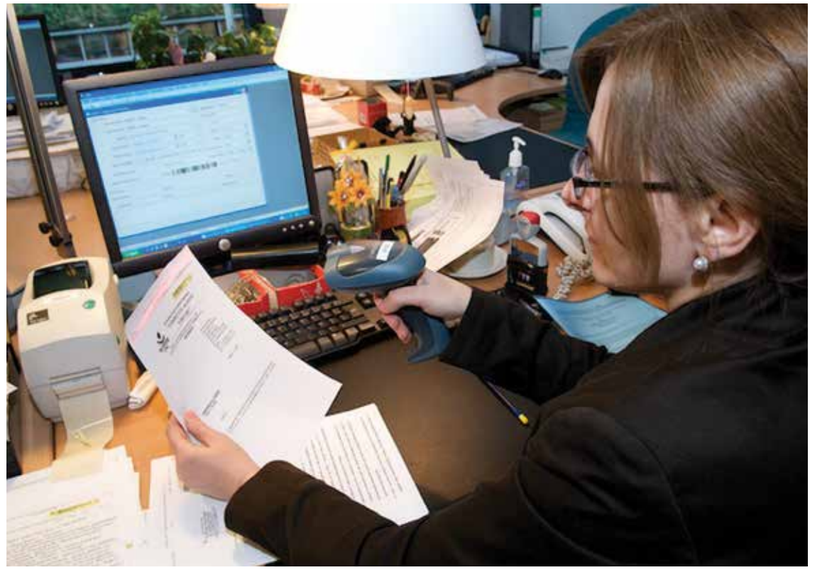
Although I had been officially appointed to the Court's service from 1 February 1981, the Registrar asked me to come in to familiarize myself with my new duties at the end of January, when there would be a hearing during the Court's session. It was then that I met for the first time the judges, who in those days sat for one week in each month in Strasbourg and for the rest of the time went about their business in their respective countries.

I found the atmosphere friendly on the whole, but on the day of the hearing there was definitely tension in the air. The parties and the public pushed forward in a crowd outside the door to the hearing room under the supervision of several ushers, who appeared to be on a war footing, while the security arrangements were discreetly managed by a few plain clothes policemen. Stenographers sat in the courtroom, ready to take notes of the oral argument before dictating them to typists installed in the library on the ground floor, which had been turned into a typing pool for the occasion. A special 'flying squad' of translators was despatched to empty offices in the building with the job of translating the verbatim record. The text thus gradually took shape in the two official languages, and a few members of the Registry – including the legal secretary dealing with the case – would be standing by to check through the result until far into the night. Early the following morning the proofs were at last handed over to the printers, who immediately ran them off on ancient roneo printers. The judges thus had the verbatim record of the hearing in their possession before they began their deliberations. Calm had returned, the hive had ceased to buzz and everyone had returned to their normal place in a more muted atmosphere, some of them showing slight traces of fatigue around the eyes.

The deliberations took place in private and were minuted. The legal secretary in charge of the case, assisted by a colleague, took complete notes of the whole discussion, which often lasted several hours. When they emerged, exhausted and with aching wrists, the typing of the text began. To my astonishment, each of the lawyers noted the judges' contributions in only one language and then gave the result to an assistant working in the appropriate language to type up. Each assistant left gaps in the part they were typing, estimating the size as best they could so that a colleague could later fit in the other contributions. The situation could become comical, because a lot of juggling was required to fit, for example, a contribution in French between two passages in English. There is no need to point out that this highly confidential document could only be put together with the help of scissors and glue.

My first experience of computers was when two computers were installed on the second floor of the Human Rights Building, one of them in an empty office and at the disposal of the Commission and the Court. One had to watch out for a suitable moment to be able to use it, and one day when it was free I decided to type a judgment. The afternoon turned stormy, and one lightning flash later the computer broke down. The next day, once the system had been restored, I was not a little surprised, on returning to my text, to find that what I had typed in French the day before was interspersed with Italian words, and it turned out that my Italian colleague from the Commission had the same problem – the texts we had typed had become jumbled up and the word-processed version of the *Sporrong and Lönnroth v. Sweden* judgment (1982) did not see the light of day.

Solange Lavenir
Member of the Registry of the Court



Every new application arriving in the Registry is given a unique application number with an associated bar-code in order to track the case, register correspondence and manage its life cycle.

the Registry is under review in the light of the Declaration made at the Interlaken High Level Conference (see Chapter 14).

Budget

According to the Convention, the expenditure on the European Court of Human Rights is borne by the Council of Europe. Under present arrangements the Court's budget is not separate but is part of the general budget of the Council of Europe. As such it is subject to the approval of the Committee of Ministers of the Council of Europe in the course of their examination of the overall budget of the Organization. The Council of Europe is financed by the contributions of the 47 member States, which are fixed on the basis of population and gross national product.

The Court's budget for 2010 was 58,588,600 euros (about 7 euro cents for each of the 800 million or so inhabitants of the member States). This sum covers judges' remuneration, staff salaries and operational expenditure (information technology, official journeys, translation, interpretation, publications, representational expenditure, legal aid, fact-finding missions and so on). It does not include expenditure on the building and infrastructure (telephone, cabling and the like).

It is sometimes suggested that the Court should have a budget that is separate from that of the remainder of the Council of Europe, but it is a matter of speculation whether this would be an advantage. A regrettable feature is that under present practice any increase in the Court's resources correspondingly reduces the resources available for other Council of Europe activities, which are directed towards promoting human rights and the rule of law in the widest sense and which include assisting member States in achieving the aims pursued by the Convention. This, coupled with adherence come what may to a policy of zero real growth for the Council's budget, can only raise a question as to the States' commitment to the Organization's long-term future.

Jonathan L. Sharpe
General Editor

Applicants are discouraged from presenting their grievances in person. If they do so, they are received in the public area or in these booths.

THE COURT'S 10,000th JUDGMENT: *TAKHAYEVA AND OTHERS v. RUSSIA* (2008)

On 18 September 2008 the Court delivered its 10,000th judgment (*Takhayeva and Others v. Russia*). It found violations of Articles 2 (right to life), 3 (prohibition of inhuman or degrading treatment), 5 (right to liberty and security) and 13 (right to an effective remedy) of the European Convention on Human Rights concerning the applicants' complaint that their relative disappeared after being abducted from their village in Chechnya by Russian servicemen. What follows is an extract from the press release in the case.

'Set up in 1959, the Court delivered its first judgment in 1960, *Lawless v. Ireland*. By the time Protocol No. 11 entered into force on 1 November 1998, establishing a full-time Court and opening up direct access to the Court for 800 million Europeans, the Court had delivered 837 judgments. Seven years on at the end of 2005 the Court had delivered 5,968 judgments. Today, some three years and another 4,000 judgments later, the Court has delivered its 10,000th judgment.

'Commenting today in Strasbourg, Jean-Paul Costa, the President of the European Court of Human Rights, said:

"These statistics testify to what has been achieved by the Court since the restructuring of the Convention machinery in 1998. They show that the right of individual application is today both an essential part of the Convention system and a basic feature of European legal culture. This achievement has to be considered, however, against the backdrop of the mass of applications the Court is now faced with and the need to ensure its continuing effectiveness. To reduce the Court's workload, governments, legislators and the judiciary in all the member States of the Council of Europe need to work together at national level to secure the rights and freedoms guaranteed by the Convention and its Protocols. It is for the States to offer this protection themselves, as an essential condition for the rule of law, whether it be the right to life or the prohibition against torture or the right to liberty and security and to an effective remedy, or again the right to a fair trial or the freedom of expression. Only when such protection is a reality at national level will it be possible to prevent such grave violations as were found in the Court's 10,000th judgment delivered today."'

JUDICIAL CREATIVITY: *AMICI CURIAE* BRIEFS IN STRASBOURG

How many people remember the important, first-ever, *amicus* brief of the Post Office Engineering Union (POEU) before the Strasbourg Court in the case of *Malone v. the United Kingdom* (1984), which exposed the practice of 'metering' telephone calls without judicial authorization? And how many observers of the Strasbourg control system realize that the origins of 'third-party interventions', now so well implanted in Strasbourg proceedings, can be traced back to initiatives taken within the Court and its Registry in the late 1970s and early 1980s?

Here, of course, I'm not referring to the possibility for a State Party, where its national is an applicant before the Court, to intervene in proceedings. Recourse is occasionally made to this possibility, which already existed in the Convention's original text. This was done, for instance, by Germany in *Soering v. the United Kingdom* (1989) or more recently by Cyprus in *Protopapa v. Turkey* (2009).

The innovation to which I refer is found in a paragraph inserted into the Convention by Protocol No. 11. This paragraph permits the President of the Court 'in the interest of the proper administration of justice' to invite a State Party that is not a party to proceedings or 'any person concerned' to submit written comments or take part in hearings. This procedure has been reinforced by Protocol No. 14 which, when it took effect on 1 June 2010, conferred on the Council of Europe's Human Rights Commissioner the right to intervene as a third party.

The idea of instituting third-party interventions was the brainchild of the Court itself. Indeed, such interventions even predate their formal inclusion in the Rules of Court: the United Kingdom was granted leave to submit a written statement on the interpretation of Article 5 § 4 of the Convention in the case of *Winterwerp v. the Netherlands* (1979), and the British Trade Union Congress was permitted to take part in public hearings and submit comments in the case of *Young, James and Webster v. the United Kingdom* (1981) but only with respect to certain questions of fact.

Even though these first tentative steps are now history, their importance is worth stressing. The logic of permitting third-party Contracting States to intervene is evident, despite the additional bureaucratic burden this may place on the Registry. One need only recall the Strasbourg Court's *dictum* in the case of *Ireland v. the United Kingdom* (1978) in which it stressed that its judgments serve not only to decide cases before it, but 'more generally, to elucidate, safeguard and develop the rules instituted by the Convention, thereby contributing to the observance by the States of the engagements undertaken by them as Contracting Parties'. This interpretative authority, *res interpretata*, of the Court's judgments of principle was confirmed in the case of *Opuz v. Turkey* (2009), § 163.

Nevertheless, is the present situation satisfactory? Probably not. Compare, for example, the intervention of eight States (Austria, Belgium, Finland, France, Ireland, Italy, the Netherlands and Norway) in *A. v. the United Kingdom* (2002), that of five States (Italy, Lithuania, Portugal, Slovakia and the United Kingdom) in the case of *Ramzy v. the Netherlands* (decision of 2008) or that of ten States (Armenia, Bulgaria, Cyprus, Greece, Lithuania, Malta, Monaco, Romania, Russia and San Marino) in the more recent *Lautsi*, Italian crucifix case of 2010 before the Grand Chamber, with the absence (incredibly) of any such intervention in the leading case of *Mamatkulov and Askarov v. Turkey* (2005). It is time, perhaps, for the Court to invite States on a regular basis to intervene as third parties in important Grand Chamber cases, as Judge Fura has proposed.

As far as other non-State, third-party interveners are concerned, the Court's initial reluctance to grant leave has now been overcome, as can be seen in the substantial increase in third-party interventions, especially those of non-governmental organizations over the last 20 years or so, which have often provided the Court with crucial additional information and expertise.

The importance of such interventions is perfectly illustrated by the first *amicus* brief submitted by the POEU in the *Malone* case to I which referred at the outset. In this case, as a direct consequence of information provided by the POEU, the Attorney General felt obliged to make the following statement before the Court:

> *I very much regret that the way in which the government put their case has led the Commission to conclude that the police are never given access to records produced by means of metering for the purpose of assisting them in the investigation or detection of serious crime otherwise than pursuant to a* subpoena *of the court. This is not in fact correct. Mr President, and if our submissions have misled anybody, may I take this opportunity to apologize. Although it is correct to say that the police do not have any power, in the absence of a* subpoena, *to compel the production of such records, the Post Office do on occasions make and provide such records at the request of the police if the information is essential to police enquires in relation to a serious crime. Accordingly, the government accept the substantial accuracy of the Union's comments in this connection.*

Andrew Drzemczewski
Head of Legal Affairs and Human Rights Department
Parliamentary Assembly of the Council of Europe

SPEAKING UNTO NATIONS: THE LANGUAGE DIMENSION OF THE COURT'S WORK

Many people in Europe know about the European Court of Human Rights, but probably few of them have given any thought to the fact that an international court has to deal with the practical problems of language(s) across frontiers – translation – as well as law. Translation is associated in many minds with the term 'simultaneous translation', so it may be as well to say at the outset of what is intended as a practical survey that in professional circles a clear distinction is made between translation (of written texts) and interpreting (of spoken language) and that these two activities are practised by two separate professions.

Unlike a number of other international organizations, the Council of Europe (and thus the Court) has the considerable economic advantage of having only two official languages, English and French. The Court's jurisdiction is based on the European Convention on Human Rights – a treaty drawn up in English and French, both texts being authoritative – and its judgments and decisions are rendered in English or French. The Strasbourg Court is therefore not in any official sense a mu ltilingual institution, although given that there are 47 States against which applications may currently be made it is certainly multinational, and because the Registry now employs at least two members of staff from most of those countries a large number of languages may be heard in its corridors. In addition, applicants may initially write to the Court in the, or an, official language of any member State, and so the majority will use a language other than English or French in the first instance.

A number of States – among them, Georgia and Albania – minted stamps on the occasion of the Court's 50th anniversary in 2009.

The Court's Language Service

The Court has always used interpreters, but even today there are no permanent staff interpreters who work exclusively for the Court. Interpreting is provided – mostly by a regular small team of experienced freelance interpreters – at Court hearings and at judges' deliberations and meetings, a situation that has not materially changed since the inception of the Court. The interpreters, even if they are not members of the Registry, are as vital to the functioning of the institution as are the in-house translators, notwithstanding that their work does not become public.

More surprisingly, perhaps, is the fact the Court had no professional translation staff of its own until 1987, especially given that in the old Court all judgments were delivered in both English and French and the relevant drafts were translated at all stages. A substantial part of the translation work was done by one or other of two native English speakers or of two native French speakers among the Registry's lawyers. Although the staff concerned acquitted themselves honourably, they had less and less time to devote to it and no particular training or, often, inclination for it. As translators, they were, as one of them ruefully admitted, amateurs – albeit unusually gifted ones.

Between the end of 1973 and the end of 1987 the part-time Court's average annual workload was eight times what it had been between the end of 1959 and the end of 1973, while over the same period (1974–87) the number of lawyers in the Registry did not even treble, and the Registry was finding it more and more difficult to cope with translation in addition to its other duties. Late in 1986 a request by the Registry for the creation of two posts of senior translator (one into English and one into French) was granted, and since 1987 further posts have been created to cope with the ever-growing workload. There are currently (2009) 17 linguist posts in all (nine in the French Language Division and eight in the English Language Division). The quantity of documents to be translated, however, is such that the Court's translators cannot handle them all unaided, and a substantial number have to be farmed out to freelance translators.

The work of the Court translators has remained essentially the same over the years. It has, however, altered in two respects in addition to the changes resulting from the replacement of the part-time Court with the present full-time one (which did not, in fact, strictly affect the nature of the work).

The Chambers' and Grand Chamber's deliberations are always attended by the Section Registrar (or Deputy) and the lawyer responsible for the case under consideration. Until 1994

the Court's final deliberations used also to be attended by a lawyer working in the other official language, who would note the amendments made and would assist the Court with the translation of any amendments proposed or any other linguistic problems in that language. In the summer of 1994 these duties were at last, logically enough, transferred to the language staff, and thereafter it was the translator of the draft who attended the deliberations instead of the extra lawyer.

The second change stemmed from the nature of the operations of an increasingly large international Registry staffed by nationals of more than 40 States. While functioning in only two languages represents a clear financial saving, one drawback is that the drafting language will usually be a language that is foreign to the writer. This inevitably has an effect on the standard of drafting. After the inception of the full-time Court in November 1998 all draft judgments continued to be 'quality-checked' by a senior lawyer, but it was only in late 2002 that a systematic preliminary 'language check' by the relevant language division was introduced for judgments and decisions selected for publication in the Court's official reports. As the volume of work continued to grow in the following years, it became impossible for the translators to cope with the language-checking in addition to translating, and it was eventually decided to employ native English- and French-speaking executive-grade staff with good native-language skills expressly to carry out this duty. In 2007 six language checkers were recruited, three to each language division.

Practice, Problems and Prospects

In contrast to the practice of the old, part-time Court, most of the full-time Court's judgments are not bilingual. Only those selected for publication in volume form in the *Reports of Judgments and Decisions* are translated into the other official language. In practice these are leading judgments of the ordinary seven-judge Chambers together with nearly all those delivered by the 17–judge full court known as the Grand Chamber.

Most Section judgments that are to be published have been translated only after they have been adopted by the Chamber concerned and are authoritative only in the original language. This is not an ideal practice because it greatly reduces the scope for translator input and creates an unduly large backlog of translation work. Grand Chamber judgments, on the other hand, are nearly always published and are accordingly processed bilingually from the outset, so that the judges have two drafts before them, the original and its translation into the other official language, both of which will be authoritative when adopted. The ideal would be to move gradually towards the 'simultaneous' bilingual processing of as many as possible of the judgments that are recommended for publication in volume form, not just those of the Grand Chamber. As anyone who translates – or has been translated – knows, translation is the cruellest form of textual analysis: little in the way of logical weakness or textual inconsistencies is likely to escape the translator, who thus has a valuable function as an additional checker of the original. This contribution by the translators may be termed the hidden 'added value' of translation and has long been appreciated by the Court's judges and lawyers, underlining the desirability of translating drafts before they are adopted by the Court.

As far as the Court's 'consumers' are concerned, and perhaps also thinking about the future, one has to remember that not only will judgments in most cases be drafted by non-native speakers of the drafting language but they will also be read by more non-native than native speakers of English or French. The dramatically expanded membership of the Council of Europe, which exactly doubled in the 15 years between the end of 1989 and the end of 2004, has made this a matter of increasing concern. It is clearly desirable in principle for the Court's judgments to be made available in the languages of all the member States, as are those of the Court of Justice of the European Union, or at the very least in the language(s) of the State against which a given case was brought. It is one thing to expect the Court's judges to be able to function in English or French; it is quite another to expect the average citizen or even the average national lawyer to be able to read English or French. However, the alternative is to translate the judgments into the official languages of all the Council of Europe's member States. The practical obstacles are formidable. Up to 40 languages would be involved. Who would do the translations? Who would check them? And who would pay?

Martin Weston
formerly Head of the English Language Division
in the Registry of the Court

[The author wishes to thank his successor, Christopher Sawyer, for his assistance with the preparation of this article.]

Above: *'In some glass case halfway between us, lit up like tropical fish, the translators were noiselessly mouthing my words in various languages which some of the judges put on headphones to catch, and others, either superb linguists or premature adjudicators, didn't bother to fit over their ears.' (From John Mortimer: 'Rumpole and the Rights of Man' in* Rumpole and the Angel of Death, *Penguin Books, 1996.)*

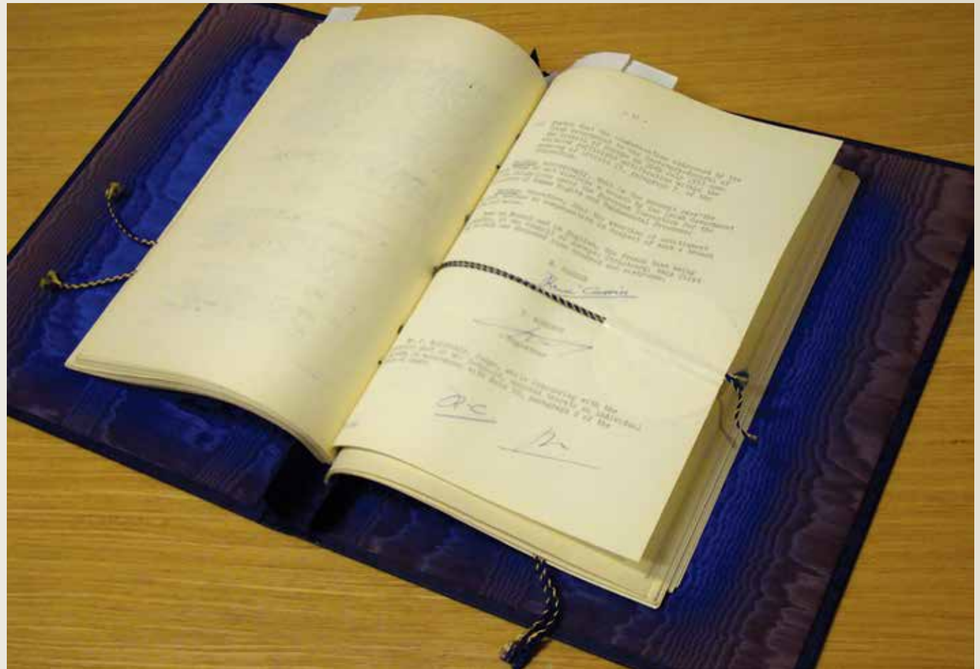
Opposite: *The* Lawless v. Ireland *judgment (1961). These days, judgments are no longer bound.*

GETTING THE MESSAGE ACROSS: THE CHALLENGE OF MAKING CONVENTION STANDARDS KNOWN ACROSS THE LENGTH AND BREADTH OF EUROPE

One of the challenges facing the Court today is to ensure that readily understood information about its procedure and case-law reaches those who most need it at the grass-roots level, whether this be the advocate in Azerbaijan, the court official in Croatia, the police officer in Poland, the public prosecutor in Portugal or the social welfare official in Sweden. The Court's judgments and decisions do not just serve to resolve individual disputes between applicants and States; they also serve as a guide to how the Court expects Convention standards to be applied at domestic level. It is thus essential for the Court's case-law to be disseminated to the widest possible audience.

Various official texts adopted within the Council of Europe place much of the responsibility for dissemination on the governments of the member States, which are required under Article 1 of the Convention to 'secure to everyone within their jurisdiction the rights and freedoms defined in [the] Convention'. When supervising the execution of a judgment that finds a government at fault the Committee of Ministers may require it to publish a translation of the judgment. Non-governmental organizations, at both national and international level, also have an important role to play in summarizing and translating the Court's leading judgments for their members and the general public.

As a matter of principle, is it right and proper for the Court itself to engage in pro-active outreach activities? I believe it is. The Convention requires national courts and authorities to apply the Convention, and in order to apply it they must understand



it. At the very least, they should be aware of the basic principles laid down in the Court's case-law. In some, but by no means all, member States a legally trained younger generation may master one or both of the Court's official languages (English and French). The fact remains, however, that a large number of legal and other professionals who are required to apply the Convention standards are simply unable to comprehend them because of the language barrier and, to some extent, because of unfamiliarity with a system where case-law plays such an important role. And, of course, these problems are compounded where lay applicants are concerned.

How, then, can the Convention reasonably be invoked and applied in all corners of all member States? Reaching out to these various audiences in as many languages as possible and using a variety of tools is fundamentally a precondition for enhancing the authority of the Court's case-law and bringing human rights justice closer to home.

Faced as it is with an ever-increasing influx of cases, would the Court not be better off with less outreach and publicity? I believe the opposite is true. By making key material available to lawyers and lay applicants in more languages the Court might see a reduction in the number of incoming manifestly inadmissible cases, which it cannot examine in substance but which will nevertheless clog up the system. By seeking to improve the understanding of national courts and authorities of the Convention standards the Court might see a decrease in the number of manifestly well-founded cases, which it can – but should not have to – examine and which likewise end up slowing down the system, ultimately to the detriment of other cases deserving a speedier examination.

In the past the Court acted much like a tribunal in the more conventional sense, confining itself to rendering justice and communicating mainly through press releases in the two official languages. Over recent years, however, it has begun to reach out to a wider audience by making material available in over 30 languages. Information technology, in particular, has played a leading role in assisting legal professionals, journalists and the general public to keep abreast of the Court's case-law and other developments.

In 2009 the Court's Internet site recorded over 215 million hits (a 30 per cent increase on 2008) in the course of more than 3.6 million user sessions. Thanks to a generous contribution by the government of Ireland hearings are being webcast on the same day to anywhere in the world. The Court's case-law repository, the HUDOC database, now offers translations of some of its leading judgments in nearly 20 languages as well as links

Above: *The Court's online search portal HUDOC provides access to case-law and a wealth of information.*

Below: *The Convention text in Turkish, and a handbook in Russian on the right to life.*

to third-party case-law collections in yet further languages. Another avenue being explored is the possibility of providing a search interface in Cyrillic characters.

Web feeds allow Internet users to receive word of the Court's most recent judgments and decisions (by importance and respondent State), press releases, noteworthy cases on which the Court has just sought the respondent government's observations, general news, webcasts, monthly case-law information notes, the availability of translations into non-official languages and the latest acquisitions by the library. And, in the latest of a series of proactive moves, in 2010 the Registry will begin engaging with judicial academies, law schools and other partners in member States through question-and-answer sessions over the Internet.

The Court has just updated the film outlining its activities and is also targeting the general public (and in particular the younger generation) with a video clip summarizing the Convention rights and freedoms. Both are available on the Court's Internet site as well as on platforms such as YouTube, and they are being translated into a variety of languages. In addition, podcasts and other multimedia tools are increasingly being used.

Hearings are webcast on the same day and may be viewed on the Court's website at any time later.

A further new initiative has seen the Court join forces with the European Union Agency for Fundamental Rights in preparing a case-law handbook analysing the key principles developed by the Strasbourg Court and the Court of Justice of the European Union in the field of non-discrimination. Here again, because it is vital that the target groups will be able to understand and apply those principles, the handbook will appear in a variety of languages.

It is in the interests of the aggrieved individual, the member States and the European human rights protection system as a whole that the Convention should be genuinely applied at national level and in line with the evolving Strasbourg case-law. For this to happen the governments must shoulder the main responsibility for disseminating relevant information, although the Court will continue to assist in this work by exploring new cost-effective tools for further enhancing its outreach activities.

Leif Berg

Head of the Case-law Information and Publications Division in the Registry of the Court

IT AT THE COURT

I was recruited by the Court in 1996 in order to modernize and to put into place a decentralized IT system. At the time there were 70 users (compared with more than 720 now), the majority of whom worked on MSDOS machines, used WordPerfect 5.1 as their word processor and, if they were lucky, had access to a now obsolete Teamlinks mailing system. In comparison with other systems, it was Neolithic.

The first thing we did was to move all the users to a Microsoft NT platform giving them access to MS Office suite for the creation and production of documents, as well as Exchange and Internet Explorer for mail and Internet access. At that time there was one server for the whole Court situated in my office. Now we have a proper server room with over 45 servers. All the documents and existing Word Perfect templates were migrated to MS Office, and conversion programmes were written to make this process as smooth as possible for the users. This move guaranteed a feelgood factor among Court users, who suddenly found that, with the right business tools, their working environment improved considerably. I do, however, recall that the Friday before we rolled out the new system the Registrar asked me if I was confident the new system would work, otherwise, he said, half-jokingly, 'I have the only key to an office in the basement of the Court and can always lock you in if it doesn't!' Luckily it did.

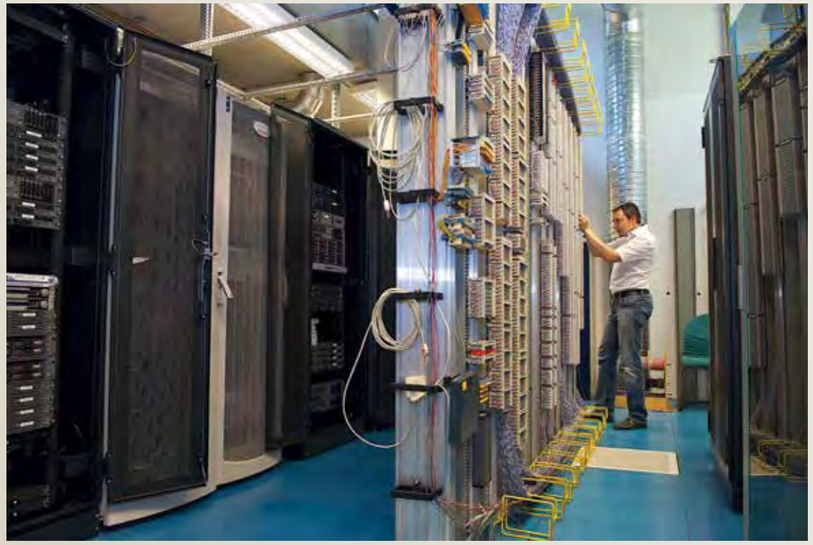
Next we formulated a long-term vision for the Court, which we broke down into phases to try and add structure to the chaos. Because of the demand for the judgments and decisions of the Court, the first and most obvious software development was the HUDOC (Human Rights Documents) project, whose aim was to provide Internet access to the judgments and decisions of the Court together with other relevant human rights documentation.

The second phase, in 1999, was to develop CMIS (Court Management Information System), which manages the internal business process of the Court (case management). In 2000 we introduced a Document and Knowledge Management System to facilitate the electronic filing of documents. The fourth phase was to develop the CMIS portal, which effectively merged HUDOC and CMIS into a unified system and provides a gateway to other data collections and databases of the Court.

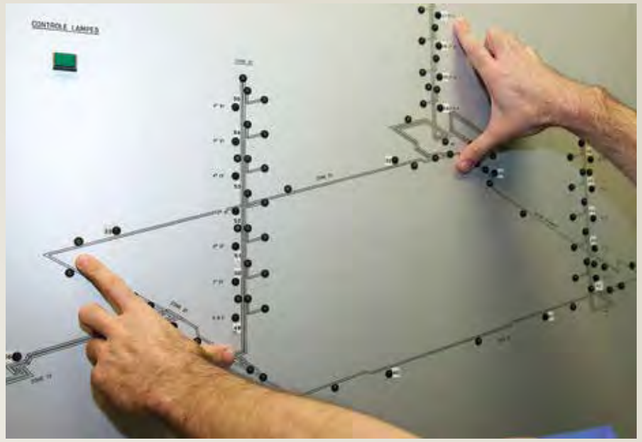
The first phase of development, HUDOC (in 1996), was critical because it opened the jurisprudence of the Court to the outside world. Politically, it was extremely important for the Court because we had to fight to get the budget from the member States, and this was the first major project embarked upon as a decentralized network independent from the Council of Europe. For this reason, the project was under intense scrutiny and, if it had failed, it would have been catastrophic for the Court because it would have been difficult to convince member States to approve the budget for the next planned phases. The HUDOC system has been operational since 1996 and in 1999 won a Microsoft Industry Award for best search and publish system. It is available via the Court's Internet site (www.echr.coe.int), which in 2009 had over 3.6 million visitors from around the world.

In 1999 the CMIS database was developed. This contains all the information pertaining to applicants to the Court, and it continues to be refined and developed. Every case that is registered goes into this system, and each application gets a registered number. We associate the case with the lawyers and decision bodies that are dealing with it. CMIS has inbuilt workflow, which controls the different proceedings that a case goes through – from a new application, to being communicated to the respondent government, to getting a decision and eventually being completed. Against each case we recall what are termed 'events'. An event is something that we want to record against a case, such as when it was registered into the system and the date the judgment was delivered. Events are used to provide statistical analysis to the 47 member States. They are also used to manage the workload between the different divisions of the Court.

The Court is highly structured, and its rules require adherence to established procedures, so we also created more than 2,000 model letters to support the work of the



The Court's server room – the core of the IT system.



*Route map (**left**) and rolling-stock (**above**) of the Court's 'documents metro'.*

Court's judges and lawyers by automating certain types of correspondence. Users simply type in an application number and the system extracts all the relevant information from the CMIS database and creates a letter. This system operates in some 39 languages, including Russian, Polish and Azerbaijani.

Not every change has gone smoothly. When we first installed the new IT system we did not have a proper server room available and one of the mission-critical servers was housed in an office. For some reason every morning at 7am the server kept shutting down and ten minutes later coming on line again. We spent weeks trying to work out what was going on, including holding several technical meetings with our service providers, but to no avail. One morning I noticed that a cleaner pulled out the plug of the server and plugged in the vacuum cleaner to clean the office. Mystery solved!

The IT Department has sometimes been under extreme pressure to make sure projects were delivered on time and on budget. Fortunately, it has always had the support, confidence and advice of the Registrars of the Court, who understand that IT is crucial for the survival of the Court and that it is an essential business tool that will enhance its productivity. The department consists of a well-structured team of dedicated individuals without whom the changes would not have been possible. Equally, our interaction with our users represents one of the main reasons why the Court's IT solutions are successful and user friendly. Having an open ear to users is critical, allowing them to identify problems that can be changed into viable IT solutions. Our team is proud of its achievements and is fortunate to have been able to contribute positively to the accessibility of the Court and justice for its applicants.

John Hunter

Head of the Information Technology Department in the Registry of the Court

INTERIM MEASURES

Nowhere does the Convention itself grant the Court any powers to 'freeze' a situation for as long as may be needed until a case is finally decided. Yet it is obvious that such a power must exist. It was left to the European Commission and Court of Human Rights to fill this lacuna themselves, which they did by making provision for the 'indication' of 'interim measures' in their respective rules.

The Court indicated its first provisional measure in 1989, in *Soering v. the United Kingdom* to prevent the applicant's extradition to the United States on a charge that carried the death penalty. It was, in fact, the prolongation of a measure indicated by the Commission a year earlier. Inevitably, the question arose whether compliance with such interim measures was compulsory. In 1991 the Court answered that question in the negative in the absence of any Convention provision to that effect (*Cruz Varas and Others v. Sweden*).

Fourteen years later, in *Mamatkulov and Askarov v. Turkey* (2005), the Grand Chamber of the Court held that extraditing the applicants to a country outside Europe in defiance of an interim measure had hindered the applicants' effective exercise of the right of petition. The Grand Chamber now reasoned that interim

Demonstration in support of Abdullah Öcalan.

measures indicated by the European Court of Human Rights created legally binding obligations.

In *Paladi v. Moldova* (2009) the respondent State was required to provide the applicant, a prisoner, with medical treatment. In its judgment the Court made it clear that it expected governments to comply with interim measures as a matter of urgency.

In the *Öcalan* case (2005) Turkey was restrained from executing the death penalty should it be imposed on Abdullah Öcalan, the leader of the PKK (Workers' Party of Kurdistan) separatist movement. In fact, Turkey abolished the death penalty altogether while the proceedings before the Court were still pending.

In the *Evans* case (2007) the United Kingdom was required to preserve embryos that constituted a woman's last chance of ever giving birth, which she hoped to have implanted despite opposition from her former partner who no longer wished to be the father of her children.

Situations such as those described above are unusual, and if interim measures are indicated, it is almost invariably to prevent the deportation of applicants to other countries, and the Court will do so if it is satisfied that there is a risk to life or health.

The number of interim measure requests has grown rapidly over the years. In 1989 there were 40, of which seven were granted. In 2009 no fewer than 654 provisional measures were indicated out of 2,399 requested.

If interim measure requests appear urgent, as is often the case – in deportation cases they are sometimes received only minutes before the applicant is to board the aeroplane – the Court and its Registry will drop everything to give them absolute priority. As numbers increase, this results in a corresponding delay in the delivery of judgments and decisions.

Peter Kempees

Head of the Just Satisfaction Division in the Registry of the Court

THE LIBRARY

The Library has a long history of collecting material on human rights, and in particular on the European human rights protection system, starting as far back as 1966 when it was established. In 2002, when the Library became part of the Court administration, its mission was enlarged to include providing support to the Court with its daily work. Now the purchased and donated material is not restricted to human rights topics but also covers the primary national literature needed for the judges and lawyers of the 47 member States to carry out their work. Handling the Court's work generates about 6,000 requests a year from Court staff to the library team. The range of questions is diverse and gives rise to a variety of responses, from preparing tailored bibliographies on a specific law subject, advising on literature, finding rare treaty texts,

locating special titles in world libraries to taking time for training in efficient searching techniques. The Library's reputation rests on the high level of its service.

Even if the priority is given to in-house users, the Library does not close its doors to external visitors who are interested in exploring the rich collection for their own studies. In 2009 more than 590 appointments were recorded for visitors from a range of legal backgrounds (students, lawyers, judges, academic scholars, writers and journalists) and from different geographical regions around the world. The external users are always eager to take advantage of the librarians' research skills and the collection's resources, and their appreciation filters through to the dedications to the Library and its staff that can often be found in the books they publish.

The Library's online tool is a catalogue that is accessible to everyone through the Internet. It holds about 50,000 bibliographical records, most of which are in the two official languages of the Court (English and French) but also in other languages, such as German, Italian and Russian. Although the titles in the collection are available in many university or State libraries around the world, the Court library is unique in its analysis of this literature and in attributing specific subject headings to enable searching by single Articles of the European Convention on Human Rights or by individual cases from the Court. Herein lies the value and richness of the collection, turning it from shelves of books into a knowledge bank on the Convention and its protection system.

The aim of the Library is to continue offering an appropriately stocked collection backed up by efficient service, certain of the authoritativeness and accuracy of the information it contains. The collection should be available to academics and researchers in Europe and beyond, supporting their contributions in the area of the European Human Rights Convention and human rights in general an d guaranteeing an established practice and cultural tradition for human rights research.

Nora Binder

Head of the Library of the Court

The Plenary Court on 30 June 2010.

First row (from left to right): *Judges Maruste, Vajić, Bîrsan, Bonello, Casadevall, Lorenzen, Rozakis (Vice-President), Costa (President), Bratza (Vice-President), Tulkens, Cabral Barreto, Jungwiert and Kovler.*

Second row (from left to right): *Judges Nicolaou, Jočienė, Davíd Thór Björgvinsson, Karakaş, Hajiyev, Berro-Lefèvre, Jaeger, Fura, Garlicki, Gyulumyan, Power, Tsotsoria, Pardalos and Poalelungi; M. O'Boyle, Deputy Registrar, and E. Fribergh, Registrar.*

Third row (from left to right): *Judges Popović, Vučinić, Dean Spielmann, Jebens, Raimondi, López Guerra, Malinverni, Šikuta, Myjer, Bianku, Ziemele, Villiger, Mijović, Hirvelä, Sajó, Lazarova Trajkovska, Kalaydjieva and Yudkivska.*

Judges Zupančič and Steiner were absent.

For subsequent changes in the Court's composition, please refer to the Appendix.