CHAPTER
12

The New Building

It took some ten years for the new building to materialize. It started in June 1983 when the Presidents of the European Court and Commission of Human Rights presented to the Secretary General of the Council of Europe a memorandum to be submitted to the Committee of Ministers describing the insufficiencies of the existing premises and requesting the construction of a new building for the Commission and the Court.

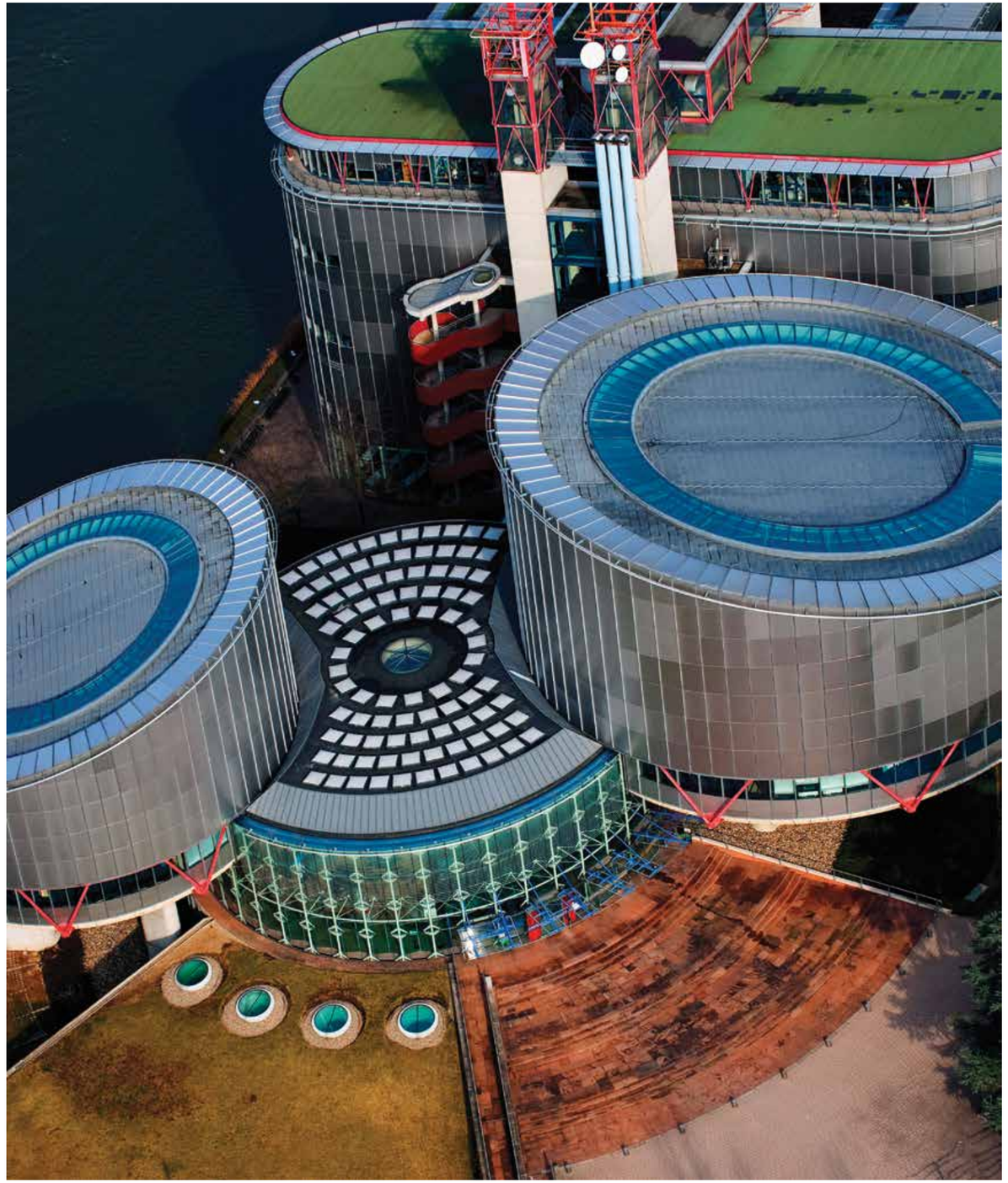
In March 1985 the Ministerial Conference on Human Rights in Vienna adopted a resolution in which the participating ministers invited the Committee of Ministers of the Council of Europe to take immediate steps to improve the working conditions of the human rights services, including their accommodation in a more adequate building. Behind this move was the Swiss government and, in particular, its then agent, the late Olivier Jacot-Guillarmod.

In 1987 the Committee of Ministers formally decided on the design and construction of a new building. At the same time it set up an advisory body, CAHLO (Ad Hoc Committee of Experts on Accommodation Needs in the Human Rights Sector), members of which were architects and other experts acting as State representatives. Its president was the French representative, Henry Bernard, who was the architect responsible for the *Palais de l'Europe* of the Council of Europe.

Subsequently, the town of Strasbourg was invited to develop a project, and in October 1987 it was entrusted to the city architect, who came up with several models. A year later the design was finally considered by all concerned as suitable for the future human rights building.

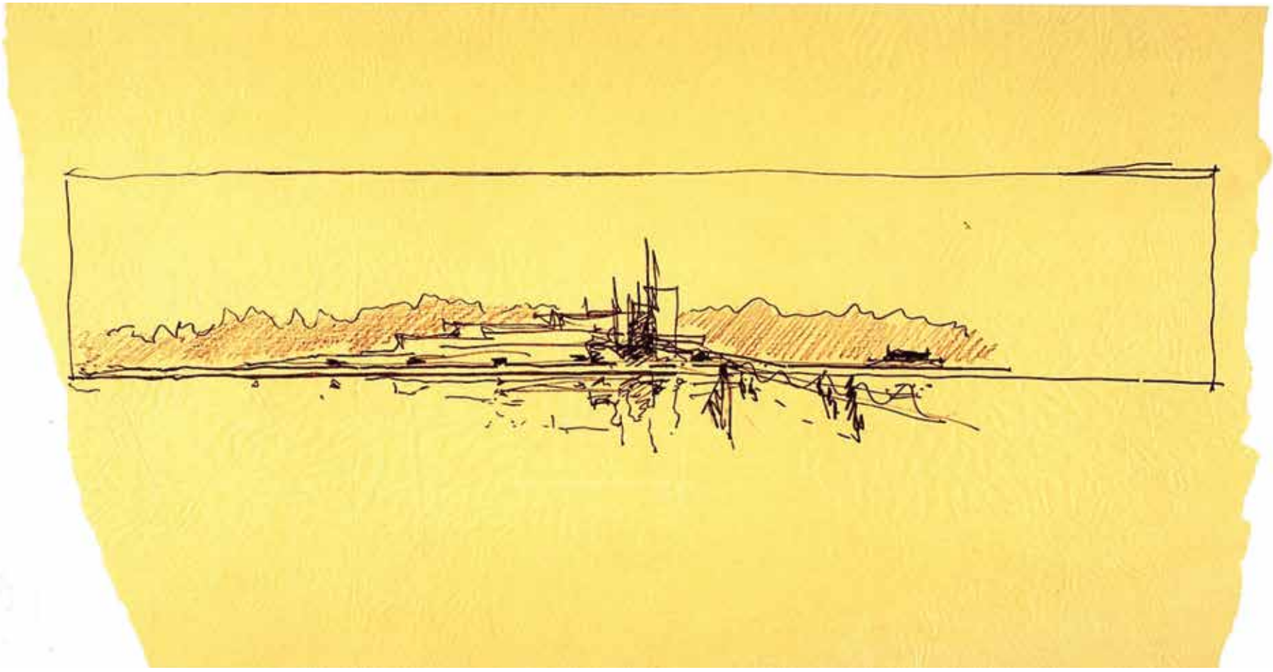
In 1989 a new mayor was elected in Strasbourg, and in the ensuing political changes a number of Strasbourg architects demanded that there should be a new competition involving architects from all over Europe. Five architects were invited to prepare a new project. The Spanish and Italian architects did not respond, but Sir Richard Rogers (United Kingdom), Thomas Ungers (Germany) and Dominique Perrault (France) accepted the invitation and each prepared projects.

Dominique Perrault, who later designed the *Bibliothèque nationale de France* in Paris, intended to place the meeting rooms of the Commission and Court at river level, thus apparently calling into question a cardinal principle for a court – that is, that one must always go up to a court's meeting room. The idea was to have the building standing on an island in the middle of the River Ill, the course of which would have had to be modified.



Left: The Court's hearings are normally open to the public and occasionally the Court also organizes Open Days.

Below: Sir Richard Rogers' first drawing of the new Human Rights Building.



The first drawing of the new building prepared by Sir Richard Rogers has become famous. It is said that when he first heard about the forthcoming project he sat down and sketched this outline of the building.

In the summer of 1989, acting on the opinions of a jury set up by the city of Strasbourg, the European Commission and Court of Human Rights together with CAHLO and the Committee of Ministers decided that Rogers's design should be built. In fact, it was a consortium of the Richard Rogers Partnership Ltd, London, and Claude Bucher from Strasbourg. All concerned considered that Rogers had a worldwide reputation as an architect – he had previously designed the Centre Pompidou in Paris and the Lloyds building in London – and were impressed by the idea of a building along the river that resembled a ship. The fact that the Court and Commission rooms were well in evidence from the outside was also an important factor. The project proceeded from the assumption that, in addition to the 21 Convention States, there might be at most four more States. According to the original plans, the building was to have an overall area of 22,500 square metres. Altogether ten architects, ten engineers, three economists and three landscape architects were involved in the building.

From the autumn of 1989 tenders for the construction and installation of the new building were invited from all over Europe, and advertisements placed in major European newspapers generated 750 responses. The final choice was made by the tenders board, which attempted to internationalize the partners. As a result, many French but also a number of British, German and Belgian companies were involved in the building, and a total of 50 firms and 125 subcontractors worked on the project. There were 1,500 site workers, who worked a grand total of 800,000 hours.

In November 1989 the Berlin Wall fell, and the subsequent changes in the European political landscape had a direct impact on the Council of Europe. Many Central and East European States now wished to join the Council and to ratify the Convention. Overnight, the proposed building had become too small, so the plans were revised on the basis of a projected total of 30 Convention States. Later, with the collapse of the Soviet Union, the figure was revised upwards to 45 (in 2009 there were 47 member States).

Where today there is the tram-stop known as *Droits de l'Homme*, there used to be a beautiful half-timbered house close to the canal containing the European Pharmacopoeia, a Council of Europe body (which was then moved to the Meinau suburb until its current premises at the Allée Kastner were completed in 2007). Because the house was a protected heritage site, when the construction work began it was disassembled beam by beam in 1990 and rebuilt behind the Human Rights Building where it now serves as the premises of the International Institute of Human Rights.

In February and April 1992 the Committee of Ministers decided to extend the 'wings' of the building to create more office space. In zone 20 a fourth and fifth floor were added for meeting rooms, as well as a sixth floor, which holds the offices of the President and Vice-President and their staff. After some delay, the Committee of Ministers also decided to take the costly decision of enlarging the 'drums'. The overall area of the new building grew to 28,500 square metres.

As from spring 1992 the planned extension of the wings faced an unexpected problem. Wing 30 (the longer one) could not be lengthened because of a nearby private dwelling, the owners of which refused to sell. Expropriation proceedings were instituted, but this was not the end of the story. Because of a procedural error, a French court of appeal quashed the expropriation order, and the proceedings had to be resumed.

Above: The International Institute of Human Rights.

Below: *French President François Mitterrand lays the foundation stone.*

Below right: *The inauguration of the building. From left to right: Carl-Aage Nørgaard, outgoing President of the Commission, Rolv Ryssdal, President of the Court, Miguel Ángel Martínez, President of the Council of Europe Parliamentary Assembly, Václav Havel, President of the Czech Republic, Jacques Toubon, French Minister of Justice, Daniel Tarschys, Secretary General of the Council of Europe, Catherine Trautmann, Mayor of Strasbourg, and Adama Dieng, Secretary General of the International Commission of Jurists.*

SOME STATISTICS

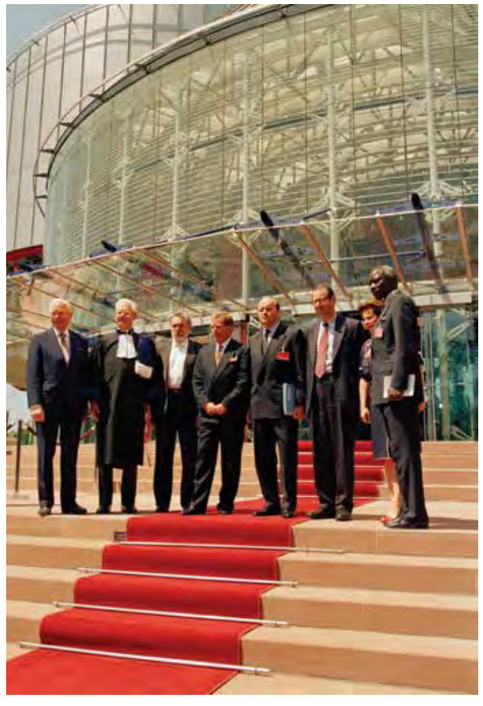
The following figures give a further impression of the size of the building:

- 15,000 cubic metres of concrete were used.
- The metal frames weigh 450 tons.
- The total floor space of 28,500 square metres includes 860 square metres and 520 square metres for the two main hearing rooms, respectively, 4,500 square metres for the meeting rooms, and 16,500 square metres of office space.
- Some 500 kilometres of electric cables were installed with about 5,500 lights.
- There are 10 kilometres of piping, four heat pumps and 16 separate air-handling units.
- There are 2.8 kilometres of fixed plant windowboxes (the 'hanging' gardens).
- The children of judges and staff are always excited to see the 500 metres of document conveyers moving along the corridor ceilings and vanishing into tunnels, transporting documents to the distant corners of the building.
- The Court's main hearing room (the large 'drum') contains 260 seats for the general public.
- Some 6,200 plans and some 5 million miscellaneous documents and items of correspondence were prepared.

At an official ceremony on 4 May 1992 the first stone was laid by President François Mitterrand of France and the President of the Swiss Federal Council, René Felber (Switzerland was chairing the Committee of Ministers at the time).

In late 1993 the first lawyers moved into the new building. For some time Commission and Court deliberations and hearings continued to take place in the former building, but by the autumn of 1994 the Court and Commission were fully installed in the new building. Other services were also housed in the building, notably the Directorate General of Administration, with the Human Resources, Finance and the Technical Divisions (wing 30) and the Directorate of Human Rights (wing 40).

The building was completed in December 1994, and the opening ceremony took place on 29 June 1995 in the presence of many eminent personalities, including the then President of the Czech Republic, Václav Havel.



Costs

In all, the building cost 455 million French francs (1994 value), a sum that was borne by the member States of the Council of Europe. The building is owned by the Council of Europe, Strasbourg having donated the land for a symbolic amount of 10,000 French francs, although the city did not contribute towards the building costs. The building was expensive for several reasons.

First, dividing the structure into five different parts proved to be costly. The five zones are zone 10, the 'public' area with the 'drums' (the Court's meeting rooms); zone 20, the 'intermediate' area with a total of six meeting rooms and the cafeteria; zones 30 and 40, the 'private' area with wings containing offices; and zone 50, again an 'intermediate' area underlying zones 30 and 40 with offices for parties to the Court's proceedings and for interns.

Second, the water table is relatively high in Strasbourg, and the ground contains a lot of gravel, so it had first to be consolidated by means of 'vibroflotation', which created a solid basis not requiring further foundations. The 'drums' are a considerable feat of architecture as they contain no internal supporting structure, and they were quite difficult to build.

In addition, some of the finishing details proved to be expensive, such as installing automatic blinds and flower-watering systems.

The View from the Outside

Seen from the back and the sides, the building resembles a ship. This was, indeed, the architect's intention.

The impression is enhanced by the River Ill, which flows nearby. The notion of a ship sailing in flowing water (going towards the rule of law?) is particularly vivid on approaching the building from the Robertsau suburb in the north at sunset in summer. The two drums at the front symbolize the scales of Justice as well as the two bodies – the Commission and the Court – that were originally housed in the building before they merged in 1998 following the entry into effect of Protocol No. 11.

The outside colour scheme of the building is grey concrete, enlivened by red paint on some exterior elements, blue paint on inside elements that can be seen from the outside, and stainless steel and glass. The colour combinations in the entrance of zone 10 may even be considered playful. From the outset, Sir Richard Rogers insisted on plenty of trees and greenery to break up the 'concrete effect' of the building both on the parking area and on the building's outside walls. The result is the 'hanging' gardens from the windows, which add an interesting contrast to the bare walls. The plants are sustained by an automated watering system. Between the two wings water cascades were constructed (originally a point of some discussion in view of their cost), and these worked reasonably well for some years. However, it transpired that staff working in summer with open windows were disturbed by the sound of rushing water, and eventually the whole system was simply turned off.

Sunshades and Air-conditioning

Long before the construction work began a survey was carried out among those working in the human rights field to find out if they wanted to have air-conditioning in the new building. (The question was actually phrased: 'Do you wish to have air-conditioning and therefore not be able to

open the windows?') Only one person was interested, and some 60 people said they did not want air-conditioning. This was the beginning of a long and complicated story.

In order to avoid heat in summer, mechanical blinds were fixed in front of each window. However, these blinds functioned (as they still do) not individually but automatically for the whole window frontage of a floor by means of a highly sophisticated system of photosensitive cells, which register the temperature and set the system in motion. The cells are further assisted by a computer programme that is adapted to the seasons. Blinds could not be installed on the top, fifth floor where judges had their offices, and there, the architect planned specially patented sunshades above the windows, which were designed to break up the light rays and thus reduce the temperature. However, temperatures on the fifth floor became unbearable, and judges started covering the windows with newspapers, which was aesthetically less pleasing. On one memorable day – when temperatures in their offices had risen to 40°C – judges even went on strike.

The difficulty was that once the building had been completed, it was no longer possible to install the large air vents that proper air-conditioning would require. Instead, a water-cooling system was installed, and this now ensures agreeable working temperatures all year round. On the fifth floor there are now blinds, which can be used manually.

Public Areas

In principle, the only public area of the building is zone 10, the entrance area between the two 'drums'. The general public can enter and attend Court hearings in the hearing room. However, there are no guided visits of the building. For applicants who wish to present their cases personally to the Court, the architect envisaged cabins with bullet-proof glass panes between the applicant and staff. However, these cabins are reminiscent of the speaking booths in prisons. They are still being used but now tables have been set up in the public area where Registry staff may meet and speak with applicants more openly.

The P-Room

One room – in fact, a prison room – has been set aside for applicants who wish to present their case personally at a hearing before the Court but who are serving a prison sentence in their home country. To facilitate the applicant's supervision while in the building, a secure room with en-suite facilities has been set aside for the applicant. So far, it does not appear that the P-Room has ever been used for this purpose.

Works of Art

The building houses a number of works of art. In the garden at the main entrance can be found four slabs of the former Berlin Wall, a gift from the German government symbolizing the country's reunification, the hope of all Europeans and the overriding forces of freedom. At the southeastern entrance to the parking area is a gift of the Swiss government, *The Petrified Seven*, expressing the trauma of physical and mental violence and symbolizing the Council of Europe's essential role in the protection of human rights.

Mark E. Villiger
Judge at the Court

Above: *First-day cover issued for the inauguration of the new building in 1995.*

Above right: The Petrified Seven *by Carl Bucher – a donation by Switzerland.*

Right: *Four-part panel of the Berlin Wall – a donation by Germany.*

Harutyunyan v. Armenia, 28 June 2007 (36549/03)

The Fruit of the Poisonous Tree

In 1998 the applicant was conscripted into the army. In 2002 he was found guilty of the premeditated murder of a fellow serviceman and sentenced to ten years' imprisonment. The domestic courts relied, *inter alia*, on the applicant's confession and on the testimony of two other servicemen, while acknowledging that coercion had been applied to them at the police station. The police officers involved were subsequently found guilty of abuse of power and sentenced to terms of imprisonment. The court established that they had beaten the applicant and the two witnesses, causing injuries of various degrees. By threatening to continue the ill-treatment, they had forced the applicant to confess to murder and the two servicemen to state that they had witnessed it. They had also threatened the victims with retaliation if they informed any higher authority about the ill-treatment. Referring to the above findings, the applicant lodged unsuccessful appeals against his conviction.

The Court found a violation of the fair trial guarantee of Article 6 of the Convention. It was established that the applicant had been coerced into making a confession and the two witnesses into making statements substantiating his guilt. The statements obtained under duress had been used as evidence, despite the fact that ill-treatment had already been established in parallel proceedings instituted against the police officers in question. The domestic courts had justified the use of these statements by the fact that the applicant had confessed to the investigator and not to the police officers and by the fact that both witnesses had made similar statements later, at a confrontation with the applicant and at the initial stage of the court proceedings.

The Court, however, was not convinced by such reasoning. Where there was compelling evidence that a person had been subjected to ill-treatment, including physical violence and threats, the fact that this person had confessed – or confirmed a coerced confession in his later statements – to an authority other than the one responsible for this ill-treatment should not automatically lead to the conclusion that such confession or later statements had not been made as a consequence of the ill-treatment and the fear that a person might experience thereafter. There had been ample evidence before the domestic courts that the witnesses had been subjected to continued threats of further torture and retaliation. Furthermore, the fact that they had still been performing military service could undoubtedly have added to their fear and affected their statements, which was confirmed by the fact that the nature of their statements had essentially changed after demobilization. Hence, the credibility of the statements made by them during that period should have been seriously questioned, and these statements should certainly not have been relied upon.

This judgment was of great importance since the Court reaffirmed, in very strong terms, its position on the use at trial of evidence obtained in violation of the guarantees of Article 3, which it had earlier condemned in the Grand Chamber judgment in the case of *Jalloh v. Germany* (2006). The Court concluded that, regardless of the impact the applicant's confession and the witness statements obtained under torture had had on the outcome of his criminal proceedings, the use of such evidence in itself had rendered the trial as a whole unfair.

Alvina Gyulumyan
Judge at the Court

L. v. Lithuania, 11 September 2007 (27527/03)

Subsidiarity and Gender Reassignment

The Republic of Lithuania, being a small country, has not generally presented any difficult problems to the European Court of Human Rights. During the period of application of the Convention with regard to Lithuania (1995–2009) 47 judgments have been adopted (in 54 cases), about 2,340 cases have been rejected as inadmissible, and about 360 cases have been waiting for the first examination.

L. v. Lithuania, the first case against Lithuania to cover legal problems concerning transsexuals, also raises some interesting aspects concerning the subsidiary character of the Convention system.

The applicant, L., was born in 1978 and registered as a girl. From an early age he had been aware that his mental sex was male. Later on he was diagnosed as a transsexual, and in 2000 he underwent 'partial gender-reassignment surgery' (breast removal). His birth certificate and passport were changed to indicate his identity as P.L. (no longer disclosing his gender). However, the applicant's 'personal code' remained the same, starting with the number 4, thus disclosing his gender as female.

The new Civil Code of Lithuania in Article 2.27 § 1 provides that an unmarried adult has the right to gender-reassignment surgery if this is medically possible. The second paragraph states that the conditions and procedure for gender-reassignment surgery shall be established by law.

The applicant L., relying on Articles 3 and 8 of the Convention, essentially complained that he had been unable to complete gender-reassignment surgery owing to the lack of legal regulation. The Court found no violation of Article 3 as the circumstances of the case did not reveal any exceptional, life-threatening conditions to the applicant (see §§ 46–8). Under Article 8, the Court noted that with regard to a gap in the relevant legislation (see § 57) no suitable medical facilities appeared to be reasonably available to the applicant to change his gender. The Court found a violation of Article 8 as the applicant was left in a situation of distressing uncertainty in relation to his private life.

The Article 41 part of the judgment (just satisfaction) raises important issues concerning the subsidiary character of the Convention system. Did the Court act *ultra vires* as suggested by Judge Fura in her dissenting opinion? In the judgment the Court indicated that the applicant's claim for pecuniary damage would be satisfied by the introduction of legislative measures. However should this not prove possible, and in view of the uncertainty concerning the availability of medical expertise in Lithuania, the claim could also be satisfied by the payment of 40,000 euros (see § 74 and point 6 of the Operative part).

According to the case-law of the Court, 'neither Article 13 nor the Convention in general lays down for the Contracting States any given manner for ensuring within their internal law the effective implementation of any of the provisions of the Convention' (see *Swedish Engine Drivers' Union v. Sweden*, 1976, § 50). 'Moreover, it is primarily for the national authorities, notably the courts, to interpret and apply domestic law' (see *Scordino v. Italy (no. 1)*, 2006, § 190). The States must remain free to choose by what individual and/or general means their laws and practices are to be made compatible with the Convention (see *Scozzari and Giunta v. Italy*, 2000, § 249).

When executing the judgment the government opted for the second alternative and paid the sum stipulated by the Court. It was not prepared to enact legislation as a general measure in this case. It was of the view that it could choose one of the alternatives set out in the judgment but that it was not obliged to give effect to both. The Court's approach in the exceptional circumstances of this case was undoubtedly the correct one to take. However, such an approach should remain exceptional.

Danutė Jočienė
Judge at the Court

'God sees you, and so does the European Court!'
(Cartoon in Swedish by Staffan Lindén.)

Emonet and Others v. Switzerland, 13 December 2007 (39051/03)

The Law cannot Always Provide for Every Eventuality, and Sometimes Society Changes Faster than the Law

The case of *Emonet and Others* is a perfect illustration of the truth of the above statement. The Court unanimously found a violation of the right to respect for family life guaranteed by Article 8 of the Convention because one of the applicants lost her filial ties with her mother when she was adopted by the mother's partner.

The application was lodged by Isabelle Emonet, her mother Mariannick Faucherre and her mother's partner, Roland Emonet, three Swiss nationals who were born in 1971, 1946 and 1948 respectively and who live in Geneva. Mariannick and her husband, Isabelle's father, divorced in 1985, and the father died in 1994. Since 1986 Mariannick has lived with Roland Emonet, who is divorced and has no children. In March 2000 a serious illness left Isabelle paraplegic. She remained in her own home, but needed to be cared for by her mother and Roland, whom she regarded as her father. The three applicants decided that Roland should adopt Isabelle so that they could become a real family.

In March 2001 the Court of Justice of the Canton of Geneva made the adoption official. Shortly thereafter, the cantonal civil status authority informed Mariannick that the adoption had the effect of terminating her parental tie with her daughter, Isabelle, who would henceforth take on her adoptive father's surname, in conformity with Article 267 of the Civil Code.

Mariannick and Isabelle objected to the termination of the parental tie between them and requested that it be restored. The cantonal authority stood by its decision, referring to Article 267 of the Swiss Civil Code, according to which previously existing parental ties were severed on adoption, 'save in respect of the spouse of the adoptive parent' – Mariannick and Roland were not married, just living together. In September 2001 the President of the Geneva Department of Justice, Police and Transport formally rejected the request for the restoration of the parental tie.

The applicants applied to the administrative courts, seeking to have that decision quashed, and instituted parallel proceedings to have the adoption order set aside. The Administrative Court of the Canton of Geneva initially allowed the application and ordered the cantonal civil status authority to restore the parental tie. However, on an appeal from the Federal Office of Justice, the Federal Court found on 28 May 2003 that the Swiss Civil Code ruled out the joint adoption of a child by cohabiting partners and the adoption by a cohabitant of the partner's child, that right being reserved for married couples. Accordingly, the Federal Court requested the cantonal civil status authority to enter the adoption in the civil status register.

On 2 December 2003 the applicants lodged an application with the European Court of Human Rights, alleging that the effects of the adoption of Isabelle by Roland had breached their right to respect for their family life under Article 8 of the Convention.

In its judgment the Court considered that the severing of the parental tie between Isabelle and her mother as a result of the adoption constituted an interference in the applicants' right to respect for their family life. As that interference was provided for by law, namely the Swiss Civil Code, the Court then had to decide whether that interference pursued a legitimate aim and was necessary in a democratic society (Article 8 § 2).

With regard to the Swiss government's argument that the two older applicants could have avoided this loss of the parental tie by marrying each other, the Court considered that it was not for the national authorities to take the place of those concerned in deciding what form of communal life they wished to adopt. It pointed out that the concept of 'family' under Article 8 was not confined to marriage-based relationships and could encompass other 'family' ties. Moreover, the Court considered that the applicants could not be reproached for having been unaware of the full extent of the consequences of their request for adoption, which had resulted in the severing of the parental tie between mother and daughter.

In those circumstances the Court considered that respect for the applicants' family life would have required both the biological and the social realities to be taken into account, in order to avoid the application of legal provisions to a particular situation, like that of the applicants, which they had clearly not been intended to cover. Failure to take those realities into account had flown in the face of the wishes of the individuals concerned, without actually benefiting anyone.

Accordingly, the Court found that there had been a violation of Article 8 of the Convention.

So, what is the moral of this unusual tale? It is twofold. First, in stipulating that previously existing parental ties are severed, Article 267 § 2 of the Swiss Civil Code was clearly drafted with the adoption of minors in mind, which is certainly by far the most frequent form of adoption. In affirming, moreover, that 'the provisions on the adoption of minors shall apply by analogy', Article 266-B of the Civil Code, on the adoption of adults and persons declared incapable, did not allow for the fact that as regards adult adoptees there was no real justification for severing the previously existing parental tie or public interest benefit to be gained. By failing to distinguish between the adoption of minors and adults the law failed to allow for all the possible consequences of the effects of adoption – the law cannot always provide for every eventuality.

Second, in providing for previously existing parental ties to be severed 'save in respect of the spouse of the adoptive parent', the law failed to allow for social change and the fact that couples who live together tend increasingly to be treated as married couples – sometimes society changes faster than the law.

Giorgio Malinverni
Judge at the Court

Loopholes in Length Legislation

Mr Parizov is a Macedonian national, who was born in 1936 and lives in Štip. On 17 November 1986 the applicant and three other persons instituted civil proceedings before the Štip municipal court for the annulment of a care agreement concluded on 7 December 1979 between the applicant's late father and his stepmother. The proceedings lasted for over 21 years, of which ten years, nine months and five days fall within the European Court's temporal jurisdiction. At the time when the Court gave judgment, the impugned proceedings had not yet ended, since the Supreme Court had not decided on the applicant's appeal on points of law.

In Strasbourg the applicant complained that the length of the proceedings had been incompatible with the 'reasonable time' requirement, laid down in Article 6 § 1 of the Convention, and he contested the effectiveness and clarity of the specifically designed remedy (to address the issue of excessive length of proceedings) introduced by the Courts Act of 2006.

The Court decided that owing to the excessive length of the proceedings there had been a violation of Article 6. At the time when the applicant brought his complaint to the Court, he did not have any effective legal remedy available to him in respect of the length of the pending proceedings. Such a remedy was introduced by the 2006 Act, which came into force on 1 January 2007, but the applicant had not availed himself of that remedy. The 2006 Act did not contain a provision that would explicitly bring within the jurisdiction of the national courts all applications pending before the Court irrespective of whether they were still pending at domestic level. The Court outlined the shortcomings undermining the effectiveness of the 'length remedy' as having been specified under the 2006 Act as then in force. Bearing in mind that the case had been pending before the domestic courts for more than 20 years before the introduction of the remedy by the 2006 Act and was still not decided, the Court concluded that it would be disproportionate to require the applicant to try that remedy.

After the *Parizov* judgment, in 2008 new provisions regarding the 'length remedy' were introduced into the 2006 Act. The new Act eliminates the loopholes from the 2006 Act. Now, it is only the Supreme Court that decides on the 'length remedy', within six months from the introduction of the appeal. A party concerned can use it within six months after the service of a final decision. The Supreme Court decides on the basis of the criteria established in the European Court of Human Rights' case-law, and if the Supreme Court finds a violation of the 'reasonable time' requirement, it can not only determine a time limit within which a lower court should decide the case but also award compensation.

Mirjana Lazarova Trajkovska
Judge at the Court

Editor's Note: This note is based on a judgment reported as *Parizov v. 'the former Yugoslav Republic of Macedonia'*, 7 February 2008 (14258/03).