The European Convention on Human Rights at 50

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THE EUROPEAN CONVENTION ON HUMAN RIGHTS AT 50

PART ONE

IMPRESSIONS OF THE CONVENTION

PART TWO

MINISTERIAL CONFERENCE ON HUMAN RIGHTS

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Foreword

The fifty-year life of the European Convention on Human Rights has been part of more than half a century in which – with certain tragic exceptions – Europe has enjoyed peace. The call of "never again", which inspired the drafting of the Convention after the second world war, has so far been heeded. Not only that, but Europe is growing more united, thanks both to various international organisations and to closer bilateral co-operation. The Council of Europe, the oldest European organisation, has played a pioneering role here and continues to do so, particularly in relation to the countries of central and eastern Europe – as witnesses the planned admission of Armenia and Azerbaijan to the "European House", which will take the number of member states to 43.

In the fifty years since the European Convention on Human Rights came into being, twelve interstate applications have been lodged, the European Court of Human Rights has delivered hundreds of judgments and the former European Commission of Human Rights issued thousands of reports and admissibility decisions on applications. Nor should we forget the work of the Committee of Ministers, which bears collective responsibility for the execution of the Court's judgments. Together these achievements based on the Convention have helped us advance towards the Council of Europe's goal, set out in its Statute, of bringing about greater unity between its members through, inter alia*, the maintenance and further realisation of human rights and fundamental freedoms.*

The Convention's fiftieth anniversary is surely also an appropriate occasion to look to the future. The Council of Europe's enlargement has hugely increased the flow of applications to the Court. Although the reforms implemented under Protocol No. 11 to the Convention have enabled the Court to work faster, the Vienna Summit's October 1993 decision on reform may have underestimated the enormous consequences of the Council's enlargement to a membership of more than forty countries. It is clear that the much hinted-at but so far undefined "reform of the reform" cannot be delayed much longer. The new Protocol No. 12 providing for a general prohibition of discrimination, opened for signature at the ministerial Conference in Rome, is a step in the right direction. The two resolutions adopted on the same occasion open up further potential. But it is important to remember that the primary responsibility for improving the standard of human rights lies with the member states. The Council of Europe's role is a subsidiary one.

So there is still a fair bit to do if the Council's flagship is to maintain headway. The anniversary celebrations in Rome must supply the extra momentum.

Josef Wolf

Permanent representative of Liechtenstein to the Council of Europe

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European Convention on Human Rights: 50 years of growth

Hans Christian Krüger, Deputy Secretary General of the Council of Europe, was Secretary of the European Commission of Human Rights from 1976 to 1997.

When the Convention for the Protection of Human Rights and Fundamental Freedoms was negotiated, the horrors of the previous two decades were still fresh in the memory of the drafters. It was their declared intention to place the incipient movement of European unification on a basis of trust and solidarity and to provide Europe with a collective safeguard against a return to such situations where human beings' basic rights and dignity had been utterly annihilated. On 4 November 1950 the Convention was signed in Rome by thirteen western European states, which just eighteen months before had founded the first post-war international organisation, the Council of Europe.

The originality of the Convention's control machinery lies in the fact that the protection of fundamental rights was entrusted to impartial and independent judicial bodies, initially the European Court and the European Commission of Human Rights. In subscribing to the Convention, states agreed not only to adapt their domestic law and practices to the rights and freedoms guaranteed by the Convention, but also to submit themselves to international supervision.

> The Convention has developed over the last fifty years into a constitutional bill of rights for the entire continent

The Convention is not merely a catalogue of basic fundamental rights and freedoms. It constitutes a body of law which has been tested, applied and developed by the Court and the Commission for more than forty years. In their case-law, the supervisory bodies have addressed many of today's critical human rights problems, such as torture and inhuman or degrading treatment, human rights violations by police and armed forces, the limits of pre-trial detention, fair trial guarantees, press freedom, immigration, child care, access to personal data, property, the rights of illegitimate children, homosexuals and other minority groups.

Creative jurisprudence

Thanks to this creative jurisprudence, the text of the Convention has constantly been adapted to the economic, political and social changes in our society. The Court's binding judgments have prompted or accelerated reforms in domestic law and practice which have strengthened the position of the individual *vis-à-vis* State authorities.

New rights

Over the years, improvements in procedure and new rights have been added by a number of additional protocols. Protocol No. 6 prohibiting the death penalty has made Europe an execution-free zone, at least as far as Council of Europe member states are concerned. Protocol No. 11, which entered into force on 1 November 1998, abolished the two-tier system consisting of Commission and Court and made the European Court of Human Rights a permanent institution. On the occasion of this 50th anniversary, Protocol No. 12, containing a general prohibition of discrimination, will be opened for signature in Rome.

What was initially established as an international system for the collective enforcement of fundamental rights and freedoms in western Europe has developed over the last fifty years into a constitutional bill of rights for the entire continent. With over forty States Parties, its scope of application now extends from the Atlantic to the Pacific, covering an area with a population of some 800 million people. This is a highly significant achievement of European integration. It also reflects the political resolve clearly expressed by all member states of the Council of Europe for the speedy integration of all European democracies in a Europe without dividing lines.

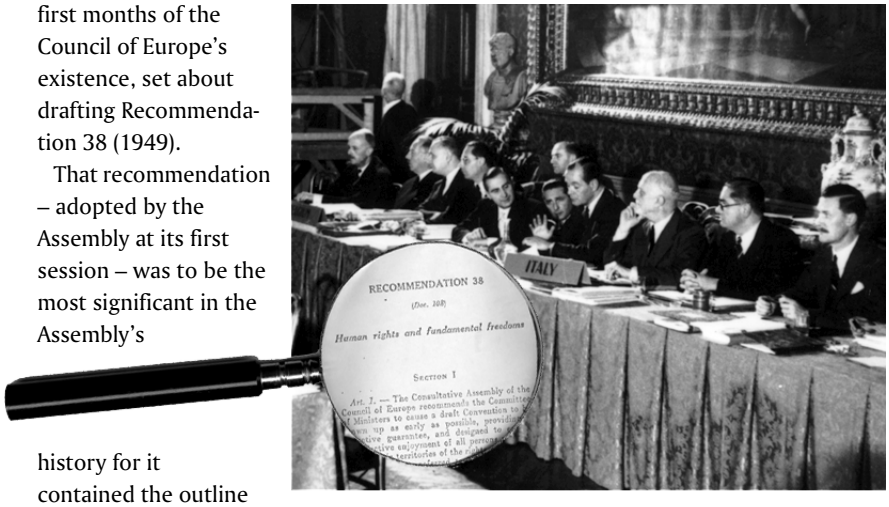
Our priority: allowing the Convention to develop

The Committee of Legal Affairs and Human Rights, one of fifteen committees of the Council of Europe's Parliamentary Assembly, is deeply involved in the promotion and defence of human rights.

Its president, Gunnar Jansson, reviews the committee's activities over fifty years.

As I pen these few lines to mark the 50th anniversary of the signature of the European Convention on Human Rights on 4 November 1950 in Rome, my thoughts turn to the parliamentarians of the Committee on Legal Affairs and Human Rights, and especially their rapporteur, Pierre-Henri Teitgen, who in 1949, in the first months of the Council of Europe's existence, set about drafting Recommendation 38 (1949).

That recommendation – adopted by the Assembly at its first session – was to be the most significant in the Assembly's history for it contained the outline of the European Convention on Human Rights.



For fifty years – or, more precisely, since it came into force in September 1953 – the Convention has been steadily evolving, not only through the decisions of the European Commission of Human Rights and European Court of Human Rights but also at the instigation of the Assembly, which has been responsible for many initiatives to have new rights included in the Convention or to improve the machinery of human rights protection, including Protocol No. 11, putting the machinery on a fully judicial footing.

It is true, of course, that the Committee of Ministers has not always followed up the Assembly's initiatives to develop the Convention. I am thinking in particular here of the many attempts to include a truly effective right to equality between men and women and to add sexual orientation to the list of grounds in the prohibition of discrimination.

> Two main aims: effective enforcement of the Court's judgments; and co-ordination between the Convention and the EU's Charter of Fundamental Rights

Now, however, there are new challenges. The Assembly is concerned to achieve two main aims in relation to the Convention: effective enforcement of the Court's judgments, and co-ordination between the Convention and the European Union's Charter of Fundamental Rights.

Lack of enforcement of its judgments actually threatens the very survival of the Court, to which some 800 million Europeans now have access. The Court must remain what it has always been – a subsidiary avenue of appeal. It should intervene only where national judicial systems have failed.

The states are thus primarily responsible in this respect. The Assembly is determined to shoulder its share of the responsibility and to play a greater role in monitoring the enforcement of judgments.

With regard to the European Union's Charter of Fundamental Rights, the Assembly sees this text not as competing with the Convention but as a natural development that should further consolidate the protection of human rights in Europe.

It is anxious, none the less, to avoid a situation where two separate systems co-exist, served by two courts taking separate or even divergent decisions on the same rights. Motivated by this concern, the Assembly has already recommended that the Committee of Ministers declare itself in favour of the European Union adhering to the European Convention on Human Rights. And, of course, one should draw maximum benefit from all the progress made over the last fifty years!

Lastly, I would emphasise that the Assembly requires all countries seeking to join the Council of Europe to make the commitment of signing and ratifying the Convention. It has thus helped to extend the Convention's protection to everyone within the jurisdiction of all the Council's member states.

Tribute to Rolv Ryssdal, ground-breaking reformer

Rolv Ryssdal died in 1998. The new Court, one of the great achievements of his fourteen years' work as president, came into being just a few months later.

In 1973 Rolv Ryssdal was elected to the European Court of Human Rights, then a comparatively little-known institution which in the fourteen years of its existence had delivered just seventeen judgments. In 1980 he was elected vice-president and in 1985 president, succeeding the eminent Dutch lawyer, Gérard Wiarda, who had likewise been president of his country's Supreme Court. By the time of Ryssdal's death in February 1998 the European Court had given 733 judgments, 632 of them during his tenure as president and the large majority of the latter with him presiding over the Chamber. Those figures in themselves are an indication of the extent of his influence on the Court's development and its case-law. His presidency coincided with a decisive period in the Court's history in which it clarified the scope of the rights guaranteed in the European Convention on Human Rights.

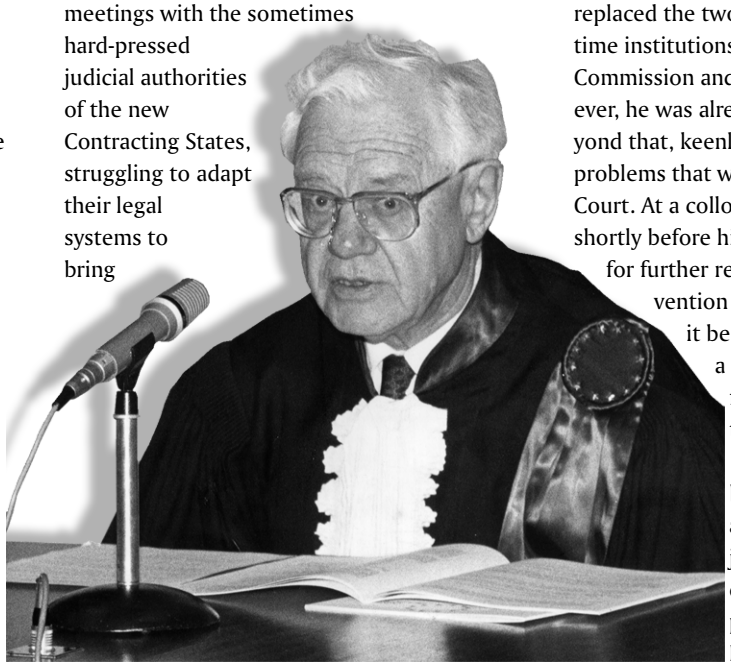
Rolv Ryssdal was a past master at the sometimes difficult task of guiding the deliberations of judges from widely varying legal traditions and backgrounds. This was admittedly made easier by his natural authority, but it was his mastery of the files and formidable memory that increased his ascendancy. That is not to say that he was authoritarian in his approach, for he was unfailingly courteous. He combined a fine legal mind with solid Nordic good sense, a feeling for the just compromise with the force of character to carry it through, intellectual rigour with great charm and a lively sense of humour.

Strengthening the protection of human rights

Rolv Ryssdal was unsparing in his efforts to strengthen the protection of human rights afforded by the Convention.
He insisted on the necessity for Contracting States to ratify all the additional protocols to the Convention, particularly Protocol No. 6, which prohibits the death penalty in time of peace. He openly criticised states for maintaining reservations to the Convention years, sometimes decades, after ratification. He also pleaded for the extension of its protection to the weakest members of society, by the introduction of a general prohibition on discrimination (soon to be become a reality in the form of Protocol No. 12) and by securing in a protocol effective protection of minorities and detainees.

> During his presidency dramatic changes took place in the European human rights community

During his membership of the Court, and especially during his presidency, dramatic changes took place in the European human rights community. The number of Convention Contracting States nearly doubled. Rolv Ryssdal actively supported these changes and the successful integration of the new judges was due in no little measure to his friendliness and understanding. Over the last few years he was always available for working meetings with the sometimes hard-pressed judicial authorities of the new Contracting States, struggling to adapt their legal systems to bring them into conformity with the Convention standards and to familiarise themselves and understand the Strasbourg case-law.



It was not surprising that as a Supreme Court judge himself he should have been especially sensitive to the place of the national judicial authorities in the Convention system. He never lost an opportunity to stress the importance of their primary responsibility in the protection of fundamental rights and to encourage contacts between national courts and the Strasbourg Court.

Campaign for reform

He had also campaigned for the reform of the European Convention and its institutions and sadly did not live to see the entry into operation of the single full-time Court, which in November 1998 replaced the two original part-time institutions, the European Commission and the Court. However, he was already looking beyond that, keenly aware of the problems that would face the new Court. At a colloquy in Potsdam shortly before his death he called for further reform of the Convention system to prevent it being submerged by a flood of cases from the new Contracting States.

Rolv Ryssdal will be remembered as an outstanding judge and President of the European Court of Human Rights.

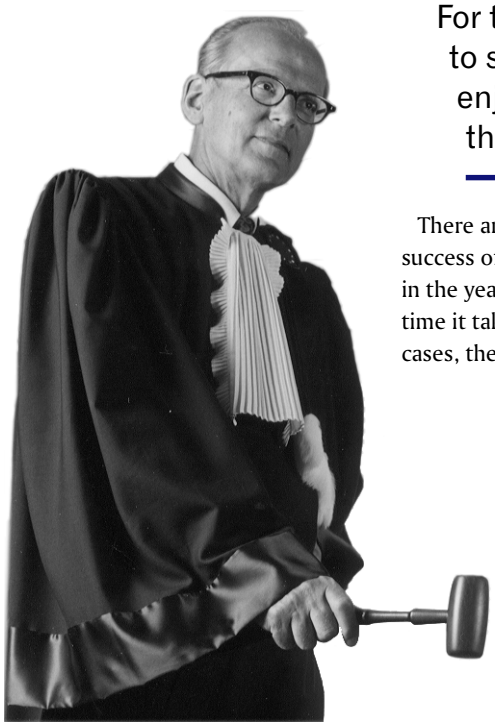
European Convention on Human Rights: past, present and future

Two years after his election as Swiss judge and president of the European Court of Human Rights, Luzius Wildhaber views the future.

Fifty years after the opening for signature of the European Convention on Human Rights, and two years after a major reform, the system of protection of human rights set up by the Convention enters the new century facing great challenges. Some 800 million European citizens in over forty states now have the possibility to bring their complaints of violations of the rights and freedoms set out in the Convention directly to the European Court of Human Rights, once they have exhausted their domestic remedies. As we celebrate the undoubted achievements of the last fifty years, we need to reflect on how those achievements can be preserved and built upon so as to be able to withstand new pressures.

Additional responsibilities

The sheer number of cases is one aspect; the last seven years have seen a 500% increase in the applications brought to Strasbourg. At the same time, the Convention now applies in many states in which democratic principles have only recently been introduced or restored. The sensitivity and complexity of cases coming from some of these states places an additional responsibility on the Convention machinery. In this context the importance of the Convention's role in the protection of human rights and above all in the consolidation of democracy and the rule of law has never been greater.



> For the Convention system to succeed it will need to enjoy the full support of the Contracting States

There are three main tests by which the success of Convention system will be gauged in the years to come. These are the length of time it takes the European Court to deal with cases, the quality of the Court's judgments and the effectiveness with which those judgments are executed. For the Convention system to satisfy these tests, it will need to enjoy the full support of the Contracting States.

There are five areas in which states are in a position to help the Court succeed in its task. Firstly it remains fundamental to the system that the domestic authorities secure the guarantees laid down in the Convention themselves, that states ensure not only that their legislation is in conformity with the Convention, but also that individual citizens are in a position to assert their Convention rights before the national authorities. Secondly, the member states of the Council of Europe must be prepared to provide the Strasbourg Court with adequate resources for it to be able to cope with its growing case-load. Thirdly, states must continue to allow the Court to operate in full independence and to propose candidates of the highest calibre for election to the Court. Fourthly, Contracting States must take the necessary steps in good faith to execute the judgments delivered by the Court. Fifthly and finally, the states must be prepared, if it becomes necessary, to engage in further, possibly radical, reform of the Convention.

Lasting legacy

Fifty years ago neither the drafters of the Convention nor the original signatories can have imagined the place that the Convention would come to hold not only in Europe, but beyond. It remains by far the most successful manifestation of the aspirations expressed in the Universal Declaration of Human Rights, a lasting legacy from the generation that had experienced the horrors of the thirties and forties and of their determination that future generations would not undergo the same suffering. We owe it to those who went before and those who are to come to preserve that heritage as an effective and credible system of human rights protection.

The trans-Atlantic perspective

The contribution of the work of the international human rights tribunals to the development of public international law

by

António Augusto Cançado Trindade, President of the Inter-American Court of Human Rights

I believe that the practice we initiated a couple of years ago of holding periodic joint meetings between judges of our two Tribunals – the European and the Inter-American Courts of Human Rights – as well as occasional meetings with members of the African Commission of Human and Peoples' Rights, is most positive and one which should by all means be maintained. It has helped us to understand better the problems we face in our daily work (since the regional systems of protection operate in the framework of the universality of human rights); and it has deepened our feeling of solidarity which, after all, lies at the very basis of our work in the field of human rights protection. Such protection is indeed an irreversible and definitive conquest of civilisation, and it is our common duty to ensure that no steps back are allowed.

A clear convergence of outlook can in fact be perceived in the case-law of the European and Inter-American Courts of Human Rights, particularly evidenced when it comes to tackling fundamental issues of interpretation and application of the two regional conventions on human rights. One of such issues is precisely that of the access to justice at international level, achieved under the two conventions by means of the operation of the respective provisions on the international jurisdiction of the two human rights courts and on the right of individual petition.

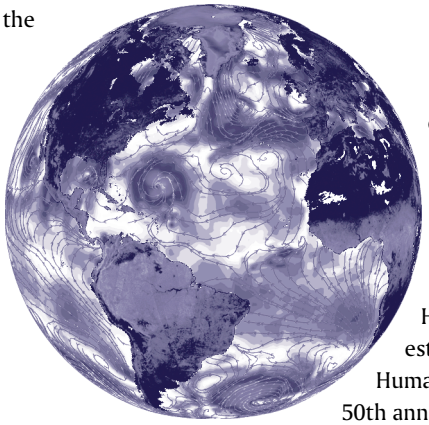
Basic pillars

I regard those provisions as being of such a fundamental character – as true fundamental clauses (*cláusulas pétreas*) of the international protection of human rights – that any attempt to undermine them would threaten the functioning of the whole mechanism of protection under the two regional Conventions. They constitute the basic pillars of the mechanism whereby the emancipation of the individual *vis-à-vis* his own State is achieved. This outlook grows in importance for having come at a time when the creation of a new international human rights tribunal (an African Court on Human and Peoples' Rights) is envisaged by the 1998 Protocol to the African Charter on Human and Peoples' Rights.

In fact, despite all advances achieved in the present domain of protection in the last half-century, from the 1948 Universal Declaration of Human Rights to date, the issues correctly resolved, for example, by both the European Court (in the *Loizidou v. Turkey* case, Preliminary Objections, 1995) and the Inter-American Court (in the *Constitutional Tribunal and Ivtcher Bronstein v. Peru* cases, Jurisdiction,

1999), touching on the very grounds and scope of the jurisdiction of the two tribunals in contentious matters, disclose that there is still a long way to go.

Both the European and Inter-American Courts have rightly set limits to State voluntarism, have safeguarded the integrity of the respective human rights conventions and the primacy of considerations of *ordre public* over the will of individual states, have set higher standards of state behaviour and established some degree of control over the interposition of undue restrictions by states, and have reassuringly enhanced the position of individuals as subjects of the International Law of Human Rights, with full procedural capacity.



Our two tribunals have gone far beyond the International Court of Justice

In this connection, we can certainly state, without margin of error, that our two international human rights tribunals have gone far beyond the International Court of Justice in the domain of protection. Just as this latter has to learn from our judicial practice in this domain, we stand in need of the techniques of Public International Law, precisely in order to strengthen our means of protection of the rights inherent to all human beings and enshrined in the European and American Conventions on Human Rights.

The work of the European and Inter-American Courts of Human Rights has indeed contributed to the creation of an international *ordre public* based upon the respect for human rights in all circumstances. In this connection, there remains in our days a pressing need for the adoption of national measures of implementation of human rights treaties, and for ensuring compliance with decisions of international human rights supervisory organs, along with a clearer understanding of the wide extent of the conventional obligations of protection undertaken by States Parties, engaging all powers and agents of the State, at all levels.

A common heritage

Last but not least, may I take this occasion to express how much I value the mutual interest in the work of our two international human rights tribunals.

Last year we celebrated, in San José of Costa Rica, the 30th anniversary of the adoption of the American Convention on Human Rights and the 20th anniversary of the establishment of the Inter-American Court of Human Rights. This year we celebrate, in Rome, the 50th anniversary of the adoption of the European Convention on Human Rights. The evolving case-law of the European and Inter-American Courts of Human Rights is nowadays the juridical patrimony of all states and peoples of our continents.

Recently, in the two last visits we received, in our headquarters in San José of Costa Rica, of delegations from the European Court of Human Rights (under the respective presidencies of Judges Rolf Ryssdal and Luzius Wildhaber), I expressed my belief, which I allow myself to reiterate here, that, instead of threatening "to fragment" International Law, our two tribunals have helped, quite on the contrary, to achieve the aptitude of International Law to regulate efficiently relations which have a specificity of their own – at intra-State, rather than inter-State, level, opposing States to individuals under their respective jurisdictions – and which require a specialised knowledge from the judges. In so doing, our two international human rights tribunals have contributed, on this eve of the 21st century, to enrich and humanise contemporary Public International Law. They have done so as from an essentially and necessarily anthropocentric outlook, as aptly foreseen, since the 16th century, by the so-called founding fathers of the law of nations (*droit des gens*).

The Convention at national level

The success of the European Convention on Human Rights is due largely to the control mechanism set up by it, which is unique in international law. This mechanism provides for two supervisory organs: the European Court of Human Rights, whose judgments are binding on states; and the Committee of Ministers, responsible for ensuring the execution of these judgments.

In accepting to be bound by the Court's judgments, states guarantee not only to take steps to redress violations suffered by individual victims, but also to adopt general measures intended to avoid the occurrence of violations similar to those found by the Court.

Such measures of a general character are of crucial importance for the maintenance and development of a minimum European standard of human rights. Their adoption involves an in-depth analysis of the root causes of the violation. Thus, the consequences of a judgment may involve changes in legislation, in the constitution or, more frequently, the recognition of new jurisprudence by the courts or changes in administrative practice on the part of the authorities. In carrying out its supervisory powers over the fifty years of the Convention's existence, the Committee of Ministers has endorsed some 350 measures of a general nature adopted by contracting states following decisions of the Convention organs. (Document HI/Conf (2000) 7 contains a detailed analysis.)

For this Bulletin *we approached a number of experts in the field – in particular the government agents – to select for us a few decisions of the Convention organs that have had especially important repercussions in their respective countries. The choice has been made according not only to objective criteria, such as the adoption of a general measure, but also to other factors, more difficult to assess, and for which the expert view is therefore all the more valuable. These secondary factors may include, for example, a judgment – sometimes concerning another state – which has had a high profile in the public opinion; one that has stimulated debate in the national or legal community; or one that has given rise to pressure towards a change in mentality.*

The following analysis bears witness to the impact of the European Convention on Human Rights in the daily life of European citizens and to its continuing vitality.

Andorra

ECHR ratified 1996

Andorra, member state of the Council of Europe since 1994, has been involved in only a few cases before the European Court of Human Rights.

• But the Court played a key role at the time of the principality's accession to the Council of Europe. In 1990 an application lodged against France and Spain (case of Drozd and Janousek) challenged a judicial procedure applied in Andorra. After lengthy proceedings the Court declared that it had no jurisdiction to judge the case. Nevertheless, the application enabled the Council of Europe to consider circumstances specific to Andorra, and helped in speeding up the accession procedure when, in 1993, the principality acquired full sovereignty by adopting the first Constitution of its history.

• Another case is worthy of remark, that of Millan i Tornes. In 1998 the first section of the European Court of Human Rights declared admissible this application, dealing with the refusal by the Andorran public prosecutor to submit to the Constitutional Court an *empara* appeal; only the public prosecutor was able to refer a case to the Constitutional Court. The decision was not open to appeal in criminal cases, and implied that the public prosecutor was both judge and party. On 22 April 1999 the *Consell General* (Andorran parliament) approved the Qualified Act modifying the Qualified Act concerning the Constitutional Court, which provides for direct access to this court. This recent act applies to persons who have already been refused access. The case of Millan i Tornes ended with a friendly settlement; and the judgment of the European Court of Human Rights led to a revision of the law.

In this way Court plays an important role in the progressive integration of Andorra into the European legal area.

Casa de la Vall, seat of the Consell General, the parliament of Andorra.

Austria

ECHR ratified 1958

The influence of the Convention on the Austrian legal order is most impressive. Numerous improvements such as in the field of criminal procedure or the establishment of Independent Administrative Senates as an additional instance in administrative procedures are examples of changes in legislation as a result of proceedings before the Strasbourg organs. The European Court of Human Rights has further contributed to clarifying content and scope of the fundamental rights and freedoms contained in the European Convention, which under Austrian law is part of the Constitution.

In this regard, two aspects of Article 10 of the Convention may be cited for having given rise recurrently to decisions of the Court in the last decade.

• Of continuing importance is the Strasbourg jurisdiction that began with Lingens (1986) and Oberschlick (1993). Regarding the restrictions on the freedom of expression by Austrian courts based on proceedings for infringements of Article 111 of the Austrian Criminal Code (a person making defamatory statements through the media incurs criminal liability unless he proves that it is true), the Court stated, among other things, that only a pressing social need and the strict application of the principle of proportionality justify a restriction of the freedom of expression. With respect to politicians or the government, the limits of permitted criticism are drawn broader than with respect to private individuals.

• A second aspect of Article 10, namely the freedom to impart information and ideas, had also a major implication in the Austrian national sphere: the judgment in Informationsverein Lentia and Others (1993) played a decisive role in the lifting of the Austrian Broadcasting Corporation's monopoly. Considering the Austrian system of licensing broadcasting enterprises, the Court defined the extent of permitted interference prescribed by law regarding the freedom of the media. According to the Court, the margin of appreciation of the State Party in this respect goes "hand in hand with European supervision", which checks whether the measures taken are "necessary in a democratic society". The Austrian system was considered incompatible with Article 10 of the Convention and consequently amended.

Freedom of expression in Austria and the role of the press in Belgium: two areas in which judgments of the Court have brought about changes.

Belgium

ECHR ratified 1955

Several judgments of the Court have necessitated a substantial revision of the law, and new changes are being examined.

• The judgment in the case of Marckx (13 June 1979) concluded that there had been a violation of Article 8 and Articles 8 and 14 taken together with respect to illegitimate and legitimate children on three counts: the manner of establishing affiliation, the extent of the child's family relationships and the inheritance rights of the child and of the mother.

• In the case of Moustaquim (judgment of 18 February 1991) the Court found a violation of the right to respect for the applicant's private and family life. The case dealt with an order to deport a delinquent alien.

• In the case of Bouamar (judgment of 29 February 1988), which called into question successive orders to place a delinquent minor in a remand prison, the Court decided, in particular, on the "lawfulness" of deprivation of liberty within the meaning of Article 5 para. 1, on the limits of its powers of supervision concerning the interpretation

and application of domestic law of the State by national authorities, on the lawfulness of placement orders, on the notion of *court* and on whether the remedies available satisfied the conditions in Article 5 para. 4.

• The cases of Borgers (judgment of 30 October 1991) and Vermeulen (judgment of 20 February 1996) were referred to the Court over a similar issue, that of the role of the *Ministère public* before the Court of Cassation and its implications for the independence and impartiality of the Court and its prosecuting authorities, in both criminal and civil proceedings.

• The judgment in the case of two journalists, De Haes and Gijsels (24 February 1997), concerned the interpretation of Article 10 of the Convention and the principle of equality of arms (Article 6 para. 1 of the Convention). The case is significant because it deals with the role of the press in a democratic society. On the alleged violation of Article 10, the Court concluded that it had not been shown that the interference with the applicants' exercise of their freedom of expression was "necessary in a democratic society". And on Article 6 para. 1 the judgment defines the notion of equality of arms and concludes that there had been a violation.

• The application in the case of Aerts (judgment of 30 July 1998) questioned the legal aid entitlement procedure before the Court of Cassation relating to the right of access to a court as embodied in Article 6 para. 1. The Court also found that there had been a breach of Article 5 para. 1, since the applicant's detention on remand and delays in transferring him to a Social Protection Centre, regarded as an appropriate therapeutic institution, had rendered his detention unlawful considering the purpose of the detention order.

• The case of Van Geyseghem (judgment of 21 January 1999) raised the question of the right of the accused, who had not wished to avail herself of her right to attend, to be represented by a lawyer in criminal proceedings, as Belgian law made it compulsory for an accused to attend the trial. The Court concluded that there had been a violation of Article 6 para. 1 taken together with Article 6 para. 3 (*c*) of the Convention.

Bulgaria

ECHR ratified 1992

The Bulgarian State introduced measures to ensure the compliance of Bulgarian legislation with the requirements of the Convention for the Protection of Human Rights and Fundamental Freedoms well before the deposit of its application for membership of the Council of Europe.

• During the period preceding the judgment of the Court in the case of Assenov v. Bulgaria (28 October 1998), opinions regarding the prosecutor's functions differed, several jurists considering the prosecutor as an "officer authorised by law to exercise judicial power", while others considered that prosecutors were not sufficiently independent or impartial for the purposes of Article 5 para. 3.

The judgment of the Court brought an end to this divergence. The Bulgarian legal community came over the majority opinion that Bulgarian law does not comply with the requirements of the European Convention of Human Rights. Legislators, jurists and Bulgarian society are convinced that it was important not to put off bringing Bulgarian legislation into line with European law. The amendments to the Code of Criminal Procedure entered into force on 1 January 2000.

Croatia

ECHR ratified 1997

Under the Croatian Constitution (Article 134), the Convention, after being ratified and published, became a part of the internal legal order with legal force superior to ordinary laws. It is binding on all state authorities – legislative, executive and judicial. This binding force extends to the case-law of supervisory organs of the European Convention on Human Rights.

The primacy of the Convention is seen in three ways:

– All laws must be interpreted in accordance with the Convention. The legislators do not intentionally pass laws contrary to the Convention. This basic principle is applied by all bodies responsible for interpreting the law, primarily courts.

– The Convention is considered a *lex specialis*, which gives it priority in application.

– The Convention may not be abrogated by any legal rule of national law.

The implementation of the Convention in Croatia has already had an impact in the national legal order. Article 6 para. 1 of the Convention guarantees the right to a fair and public trial within a reasonable time. The new Constitutional Law on the Constitutional Court of the Republic of Croatia (*Official Gazette*, No. 99/1999) allows citizens to lodge a constitutional complaint if a decision on a matter before the competent body is not made within a reasonable time. For example, the Constitutional Court held in a certain case that the competent municipality court should give judgement within the shortest possible time-limit and no later than one year from the date of the Constitutional Court's decision.

Cyprus

ECHR ratified 1962

• The Modinos case (1993) concerned an applicant, a homosexual involved in a sexual relationship with another male adult, who complained that his right to respect for private life under Article 8 of the Convention was being interfered with, through the existence of provisions in the Cyprus Criminal Code which could be invoked to institute criminal proceedings against him relating to homosexual conduct in private involving consenting male adults. The Court considered

A maximum time-limit of one year for proceedings in Croatia. Cyprus, Denmark and Norway have also had to take measures to ensure that the "reasonable time" criterion is satisfied.

that the existence itself in the statute-book of Cyprus of the prohibition of homosexual conduct in private between consenting adults continuously and directly affected applicant's private life, despite the fact that in practice, since 1981, following the Court's judgment in the case of Dudgeon v. the United Kingdom (1981), no criminal prosecutions involving such conduct had actually been instituted or allowed to be instituted by the Attorney-General of Cyprus who had competence in the matter, as the authority invested with powers over the initiation of criminal prosecutions.
Following the judgment the Government of Cyprus, which had previously been unwilling to introduce amending legislation concerning homosexuality, irrespective of the fact that the law was not actually being enforced, proceeded to table legislation in Parliament, abolishing the offending provisions of the Criminal Code, so that homosexual conduct in private between consenting male adults no longer constitutes a criminal offence under Cyprus law.

• The case of Mavronichis v. Cyprus (1998) concerned a finding by the Court of a violation of Article 6 para. 1 of the Convention. A period of more than four years and two months had elapsed, during which appeal proceedings, lodged by the applicant with the Supreme Court of Cyprus concerning a first instance judgment in civil proceedings, had remained dormant. During that time no steps had been taken by the registry of the Supreme Court to process the appeal proceedings (for example, procedural steps to list the case for hearing or to deal with interlocutory notions). The Court considered that this was a particularly significant period of inactivity, and held that the volume of work with which the Supreme Court had to contend at the relevant period did not constitute an excuse for excessive delay, bearing in mind that Article 6 para. 1 imposed a duty on Contracting States to organise their judicial system in such a way that their courts could meet its requirement to hear cases within a reasonable time.
In the light of the Court's judgment, the Supreme Court of Cyprus has actively addressed the problem of delays in civil and administrative justice through a series of legislative amendments aimed at expediting the administration of justice and containing the backlog of cases, such as, for example, by reforming and simplifying procedural rules in administrative cases, extending the competence of single judges in civil jurisdiction, and gradually developing a system for the administration of Courts intended to facilitate the monitoring of civil and criminal cases and automating the Courts' functions.

A Gay Pride demonstration in Cologne (Germany). Throughout Europe homosexuals campaign for the recognition of their rights. In Cyprus and Ireland judgments of the Court have led to changes in legislation.

Czech Republic

ECHR ratified 1992

The Czech Republic is one of the two states that inherited the rights and obligations of the former Czech and Slovak Federal Republic, which ratified the Convention on 18 March 1992. Under Article 10 of the Constitution of the Czech Republic, which entered into force on 1 January 1993, the Convention applies immediately and prevails over national domestic law.

• The first judgment of the European Court of Human Rights concerning the Czech Republic is dated 9 November 1999 (case of Špaček). The applicant company alleged a violation of its rights to the enjoyment of its property on the grounds that it was subjected to an additional tax based on administrative provisions that had not been published in the *Official Gazette*. The information concerning this judgment was widely published in the Czech media and the judgment was commented on by all national legal institutions. Following the judgment, supervision by the Strasbourg institutions of the implementation of human rights has become part of the daily life of Czech citizens.

• The final judgment in the case of Krčmář and Others, dated 3 March 2000, strengthened considerably the awareness of an effective European supervision of this respect for human rights, as it concerned the right to a fair trial. This fundamental judgment has also been a factor in awareness-raising, in that the Constitutional Court itself can be subjected to European supervision. Concerning recent judgments relating to different elements and aspects of fair trial and detention on remand, the problems found by the Court are subjected to a national examination. There is a clear trend towards taking into consideration the existing case-law of the Court, even in the application and interpretation of domestic law by State institutions. Government bills are examined more and more frequently in the light of the Convention's requirements: for instance, the recent law on the exercise of custodial sentence, in force since January 2000, shows a considerable concern for the respect of the requirements of the Convention in this field.

The Government of the Czech Republic has taken several important legislative and practical measures at national level in order to improve interministerial co-ordination and citizens' access to relevant information regarding applications before the Court, in particular, in the context of the entry into force of Protocol No. 11, as well as in the context of initial judgments and decisions of the Court. The Committee of Ministers is closely interested in this matter and wishes to be regularly informed on the state of applications lodged against the Czech Republic. Moreover, it attaches great attention to the execution of judgments in compliance with the requirements of the Court.

Denmark

ECHR ratified 1953

The significance in Denmark of the Convention can barely be overestimated. Its provi-

Denmark is not the only country where the issue of freedom of speech and racial discrimination can arise.

sions and the case-law of the Court are – extensively and increasingly – invoked before and applied by the Danish courts and administrative authorities. The Convention and the case-law of the Court also play a significant role when new legislation is being prepared.

Four times the Court has found Denmark to be in violation of its obligations under the Convention. Three of these judgments have had a significant impact in the country.

• In the case of Hauschildt (judgment of 24 May 1989) the Court found that the many repeated decisions to place or keep the applicant in detention or remand made by the same judge who eventually decided the question of guilt might justify fears as to the impartiality of the judge in question. This was especially so when the decisions were based on a provision in the Danish Administration of Justice Act which required that the judge should satisfy himself that there is a "particularly confirmed suspicion". Accordingly, the Court held that having regard to the specific circumstances of the case there had been a breach of Article 6 para. 1. Even though the judgment did not question the Danish legislation in the area, it was decided to amend the Administration of Justice Act in order to ensure that no question should arise as to the objective impartiality of the judge. The amendment was extended beyond what was required from the judgment itself – also due to the fact that the Danish Supreme Court shortly after the judgment of the Court applied what was considered a somewhat dynamic interpretation of the case expanding its area of application even further. The Hauschildt case has increased even further public interest in the question of the independence and impartiality of the Danish judges.

• In the Jersild case (judgment of 23 September 1994) the issue in question was how to strike a fair balance between the right of the press to impart information and the protection of the rights of others – in this case particularly those included in the International Convention on the Elimination of All Forms of Racial Discrimination. The applicant, a journalist, had been convicted for having aided and abetted the dissemination of racist remarks when broadcasting an interview in a news programme. Even though the Court appreciated the vital importance of combating racial discrimination, it held that Article 10 had been violated. The Court stated that news reporting based on interviews was one of the most important means for the press to play its role of "public watchdog". Only where particularly strong reasons prevailed should the punishment of a journalist for broadcasting interviews be contemplated. The Jersild case has later been applied directly by Danish courts of law in their interpretation of Danish law and has been a contributory factor to an increased respect for the freedom of speech of the press.

• The case of A and Others (judgment of 8 February 1996) dealt with the right to a hearing within a reasonable time in relation to compensation proceedings brought by haemophiliacs who had been infected with HIV through blood transfusions. The Court held that even though the applicants had been a contributory factor to the length of the proceedings, the Danish courts were obliged to ensure that the case progressed in compliance with the requirements under Article 6 para. 1. Against this background, the Court found that the competent authorities had not acted with the exceptional diligence required in disputes of this character. The judgment led to an amendment of the Danish Administration of Justice Act aimed at streamlining the procedure in civil litigation and at strengthening judges' ability to control the proceedings. Furthermore, the case has drawn considerable attention to the length of proceedings of the Danish courts and an increasing awareness among judges of their independent responsibility in relation to the length of the proceedings.

Estonia

ECHR ratified 1996

The European Court of Human Rights has so far not passed any judgment concerning Estonia. There have, however, been some admissibility decisions which have been of importance.

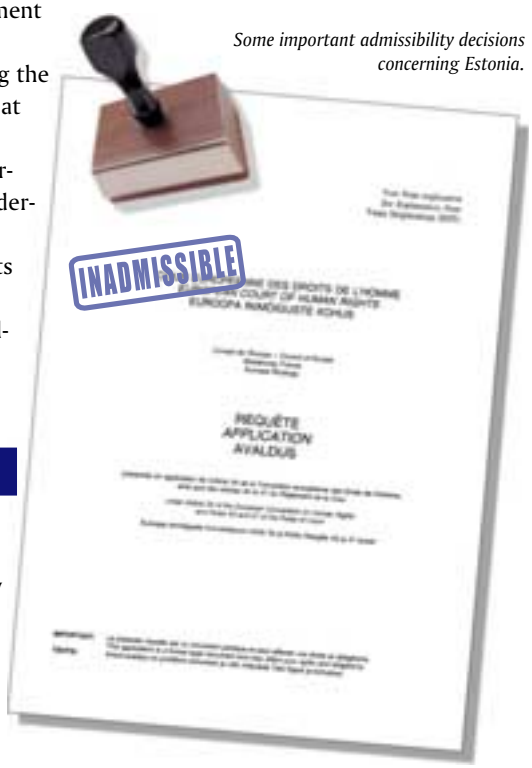
• The first set of decisions concerns Article 6 and the system of the Appeals Application Panel of the Supreme Court. The Supreme Court has to grant a leave to appeal against the judgment of the Court of Appeal. The Commission found that Article 6 of the Convention was not applicable to those proceedings (Oll, Appl. No. 35541/97).

• The second set of decisions concerns Article 1 of Protocol No. 1 to the Convention and the reservation made by Estonia concerning the non-applicability of the provisions of Article 1 of Protocol No. 1 to the Convention. The Commission and the Court have found that the reservation was valid and compatible with the provisions of the Convention (Elias, Appl. No. 41456/98; Shestjorkin, Appl. No. 49450/99).

Finland

ECHR ratified 1990

In the Z v. Finland judgment (25 February 1997) the Court gave general guidelines on the **disclosure of personal data**. The Court held that the disclosure by the Court of Appeal of the applicant's identity and medical condition without her consent for use



Some important admissibility decisions concerning Estonia.

in criminal proceedings against her husband constituted a breach of Article 8. The applicant and her husband were both infected with the human immunodeficiency virus (HIV). The Court ruled, however, that the orders requiring the applicant's medical advisers to give evidence did not constitute a violation of Article 8 nor did the seizure of the applicant's medical records nor their inclusion in the investigation file.

The national courts ordered that the full reasoning and the documents in the case be kept confidential for only ten years. The European Court held that the court order would, if implemented, constitute a violation of Article 8. Thus, at the request of the Ministry for Foreign Affairs, the Chancellor of Justice requested the revision of the impugned decision. Referring to the judgment the Supreme Court extended the period during which the trial records are to be kept confidential to 40 years.

France

ECHR ratified 1974

Since 1990 some fifteen legislative texts have been passed following a judgment of the Court in order to bring the French legislation into line with the Convention. Of these reforms, two deserve a particular attention.

• On several occasions the European Court of Human Rights has ruled on whether the practice of telephone tapping is compatible with the requirements of Article 8 of the Convention. It rendered, in particular, two judgments concerning France, on 24 April 1990, in the cases of Kruslin and Huvig.

The Court asserted that, even though it appears that the interception of communications is necessary to prevent criminal offences, as well as for the maintenance of order and for the protection of national security, the law must afford sufficient adequate safeguards against the possible abuses of such practices,

Restrictions on the use of telephone tapping in France.

which may jeopardise the respect for private life as embodied in Article 8 of the Convention. In both French judgments, the Court laid down a list of non-exhaustive regulations which should form part of legislation governing methods of interception of communications in order for that law to afford "adequate safeguards against various possible abuses".

As the requirements set out by the Court were not satisfied by any provision of French law at that time, the Government put before Parliament Law No. 91-646 of 10 July 1991 on the confidentiality of correspondence entrusted to the telecommunications service.

This law, which strictly complies with the Convention, lays down two essential principles: in the first place, only public authorities are allowed to breach the secrecy of correspondence entrusted to the telecommunications service; in the second place, public authorities can only carry out interception of telephone conversations in matters, restrictively provided for by law, connected with the condition of "necessity in a democratic society". Lastly, this law defines, in conformity with both principles, conditions in which the judicial authority, in the one hand, and the Governmental authority, on the other hand, may carry out interception of telephone conversations. The 1991 act, revised twice since its adoption, is still in force.

• In a judgment of 14 December 1999 given in the case of Khalfaoui, the European Court of Human Rights found that the procedure provided for in Article 583 of the Code of Criminal Procedure undermined the right of access to court as embodied in Article 6 par. 1 of the Convention.

French legislation provided that "Convicted persons sentenced to a term of more than one year's imprisonment who fail to surrender to custody, without obtaining from the court which sentenced them an exemption (with a surety if so ordered), forfeit their right to appeal to the Court of Cassation".

Following this judgment the French Government introduced in the text of Law No. 2000-516 of 15 June 2000 reinforcing the protection afforded by the presumption of innocence and victims' rights an Article 121 which abrogates, in particular, Article 583 of the Code of Criminal Procedure. From now on an applicant sentenced to a term of more than one year's imprisonment who lodges an appeal is exempted from the requirement to surrender to custody prior to the examination of his appeal by the assize chamber of the Court of Cassation.

Georgia

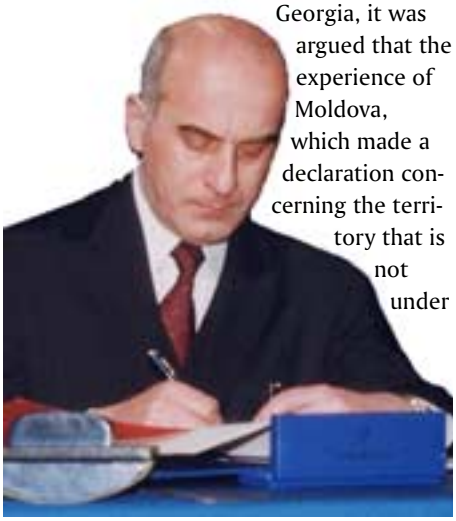
ECHR ratified 1999

In order to become a member of the Council of Europe, Georgia agreed to fulfil a list of commitments elaborated by the Parliamentary Assembly and then confirmed by the Committee of Ministers.

It took less than a month for Georgia to fulfil one of the major commitments on the list, that of ratifying the European Convention on Human Rights.

Georgia made no reservations or territorial declarations. The reservations were not made because it is understood that the whole operation of the Convention provisions and consequently the European Court's involvement will be of paramount importance in the process of building a truly democratic society where the rights and freedoms of each person are respected.

The situation was a bit more complicated with relation to the Article 56 of the Convention. Considering the present situation in Georgia, it was argued that the experience of Moldova, which made a declaration concerning the territory that is not under



Georgia's foreign minister signs the Statute of the Council of Europe. Georgia ratified the European Convention on Human Rights only one month after becoming a member.

its *de facto* control, is the most appropriate way to follow in relation to the Abkhazia and Tskhinvali regions. However, another approach was chosen, according to which no territorial declaration was made, firstly because there is a strong belief that in the near future effective control over these territories will be restored; and secondly, because there was an assumption that the European Court of Human Rights will take into account the factual circumstances as well as the international case-law on these matters.

So far there have been no decisions of the European Court of Human Rights on the applications lodged concerning Georgia, but undoubtedly the first judgment will have a substantial impact upon the country.

Germany

ECHR ratified 1952

• Firstly, in the case of Luedicke, Belkacem and Koç (judgment of 28 November 1978), the applicants claimed to be victims of a violation of their rights as defined in Article 6 (3) (*e*) of the Convention in that they had been ordered by the German courts to bear interpretation costs at their trial.

Ruling that the right embodied in Article 6 included the right to be granted benefit of free interpretation without being ordered afterwards to pay the costs of this assistance if found guilty, the Court also said that this guarantee should not be restricted to interpretation afforded during debates but extented to the translation and interpretation of all documents and oral declarations necessary for the understanding of the procedure by the accused.

Equality of treatment in the carrying out of fire-service duty at issue in Germany

As a consequence of this judgment, an Act of 18 August 1980 provided for the German revenue department to bear the costs of interpretation when the accused does not understand German.

• The case of Öztürk (judgment of 21 February 1984) also concerned the right to have the benefit of free interpretation assistance, this time in a procedure concerning a traffic violation.

In its judgment the Court referred to its decision in the case of Luedicke, Belkacem and Koç and found that there had been a breach of Article 6 (3) (*e*) of the Convention.

This decision led to a revision of the relevant judicial procedure in non-criminal offences.

• In the Schmidt case (18 July 1994) the applicant argued a breach of the constitutional principle of equality before the law in that the *Land* of Baden-Württemberg imposed obligatory fire-brigade duty on men only, which could be replaced by a compensatory financial contribution.

In its judgment the Court ruled that Article 14 read in conjunction with Article 4 (3) (d) applied to the case and concluded that it had been violated. Following the judgment the *Land* of Baden-Württemberg and the *Länder* of Lower Saxony have abandoned the imposition of a fire-service levy. Generally, the Federal Constitutional Court had held that the imposition of a fire-service duty was in breach of the Constitution, stating that similar regulations contained in acts passed by Federal *Länder* were null and void and incompatible with the Basic Law.

Hungary

ECHR ratified 1992

A careful screening process (*compatibility exercise*) was carried out between the signing of the Convention in 1992 and its ratification. Both before and after this, a number of new acts were adopted in order to bring Hungarian legislation in line with the requirements of the Convention.

The Convention had a great impact on Hungarian law also through the jurisprudence of the Constitutional Court, which has referred to the Strasbourg case-law in a great number of its decisions concerning freedom of expression, freedom of association, freedom of religion and the right to private or family life, as well as various aspects of the right to a fair trial.

Convention case-law may also be invoked in individual cases before civil or criminal

courts. A case particularly interesting to mention in this context raised essentially the same issues as the case of Hoffmann v. Austria which was referred to by the Supreme Court supporting its decision. (The applicant had complained that the custody of her children was awarded to her ex-husband rather than to herself because she was a Jehovah's Witness.)

• Most recently, the judgment in the case of Pélissier and Sassi v. France served as an incentive for modifying the Code of Criminal Procedure so as to include stronger guarantees for the rights of defence in case of re-characterisation of a criminal charge by the trial court.

Iceland

ECHR ratified 1953

The impact of the the European Convention on Human Rights on Icelandic legislation and public awareness of human rights in general has been significant, particularly the last ten years.

For a long time Iceland had an unblemished record with the Court and Commission of Human Rights, and only a few applications were filed against Iceland in the first thirty years.

• One of the most important cases which have been brought to the Strasbourg organs is undoubtly the case of Jón Kristinsson v. Iceland. In 1987, the European Commission of Human Rights examined the case of an Icelandic citizen who had

been convicted of a traffic violation in a district court. On appeal, the Supreme Court of Iceland upheld the conviction. In accordance with the procedure in effect at the time, his case had been heard and adjudicated by the town magistrate's deputy. This deputy was responsible to the town magistrate who was also in charge of the police. An application was lodged with the Commission alleging that the case of the accused had not been heard by an impartial judge in the lower instance, thus violating the Convention. In 1989 the Commission concluded that the judicial organisation then in effect violated Article 6 of the Convention. At that time, preparations were already started

An everyday traffic offence can lead to important changes.

for radical changes in the organisation of the judiciary.

In 1989 a new Act was adopted providing for the complete separation of judicial and executive branches. The main object of these changes was to make the courts as independent as possible and not dependent on the administrative branch. Besides judicial authority being transferred from the district magistrates to independent district courts, even stronger measures were taken to ensure the independence and impartiality of judges.

The case of Jón Kristinsson was referred to the European Court of Human Rights, and at the end of 1989 a settlement was reached between Iceland and the applicant. There is no doubt that the decision to reorganise the court system and to make a general revision on legal procedures before the courts owe a great deal to the European Convention on Human Rights and the case of Jón Kristinsson.

• Relatively few cases against Iceland have been declared admissible before the European Commission and the Court (10-20 cases), but they have gained great public attention and debate. In two judgments in cases against Iceland the European Court of Human Rights has found the Icelandic Government to be in breach of the Convention. These cases were Thorgeir Thorgeirson (1992), concerning the freedom of expression protected by Article 10, and Sigurður Sigurjónsson (1993), concerning the negative freedom of association and Article 11 of the Convention. Both these cases lead to changes in legislation.

In 1994 the European Convention on Human Rights was the first international human rights instrument incorporated into Icelandic law, by Act No. 62/1944. Its provisions can be invoked in court as domestic legislation.

In 1995 various amendments were made to the the human rights provisions of the Constitution. The amendments provided extensive changes and additions to the human rights provisions which had become somewhat outdated in various ways, having remained almost totally unchanged since 1874. The new human rights provisions reflect to a great extent the provisions of the European Convention on Human Rights.

Ireland

ECHR ratified 1953

The Convention has probably had the greatest impact in Ireland in the areas of family and private life, and within these areas on intimate relationships outside marriage.

Successful applications against Ireland have required legislative and constitutional change.

• Following the Court's judgment of 18 December 1986 in Johnston and Others, legislation was passed to bring the legal status of children born outside marriage more or less into line with that of children born to a married couple (Status of Children Act, 1987).

• Following its judgment of 26 October 1988 in Norris, homosexual activity between adult men was decriminalised (Criminal Law (Sexual Offences) Act, 1993).

• Following its judgment of 26 May 1994 in Keegan, provisions were enacted affording an unmarried father the opportunity to be consulted before his child is placed for adoption and the right to be heard by the Adoption Board and to oppose the adoption if he wishes (Adoption Act, 1998).

• Moreover, following the Court's judgment of 29 October 1992 in Open Door and Dublin Well Woman, the Constitution was amended to allow women to have access to information in Ireland about abortion services in other countries; and the conditions under which such information might be made available were subsequently laid down in the Regulation of Information (Services outside the State for Termination of Pregnancies) Act, 1995.

Family rights are recognised and protected by the Irish Constitution, but these are rights of the family based on marriage. Under the Convention, as interpreted by the Court, family life is based on the existence of a *de facto* relationship and the intention of the persons concerned.

A Swiss campaigner for women's rights finds an appropriate site for a poster. In Ireland certain such rights have been recognised following a judgment of the Court.

In so interpreting the Convention, the Court has responded to social change and has, through its judgments, contributed significantly to the legal recognition in Ireland of such change.

Italy

ECHR ratified 1955

To aid both in the fight against terrorism and in the repression of Mafia-type criminal activities, the Italian legislature has twice taken steps to reinforce the law. In 1965 (Law No. 575) and in 1975 (Law No. 152), prevention measures provided for by Law No. 1423 of 27 December 1956 were amended, strengthening their severity. These measures included the possibility of making a **compulsory residence order**.

The 1975 law stated in particular that persons under a compulsory residence order could, for "reasons of particular gravity", following a lawful decision of the president of the court with jurisdiction to order the preventive measure, be placed in detention during the proceedings, to prevent their avoiding the final decision by absconding before its execution.

In a judgment of 22 February 1989, the Court, pronouncing in plenary session on the application of Salvatore Ciulla, lodged in 1984, noted that there had been a violation of Article 5 para. 1, among other articles of the Convention, in the application of this case. It considered that, because of the autonomous nature of the preventive measures concerning the system of criminal prevention of offences (see paragraphs 39 and 40 of the judgment, as well as the cited judgments), as well as the conditions of their application (for the purpose of which simple evidence could be sufficient) and the procedure (to which the Court did not considered it applied) are concerned, this atypical form of detention on remand could not be justified.

As a result of the application, and before the judgment was delivered, the Italian legislature had already taken measures (Article 7 of Act No. 327 of 1988). The detention provided for under the earlier law was abolished and replaced by a compulsory residence order valid for the time it took for the decision to become definitive.

General measures which could have been necessary for the execution of the judgment of the European Court of Human Rights had therefore already been adopted while the caseds was before the Court – as indeed the Court itself stated and, moreover, used in its line of reasoning (para. 41 of the judgment) to confirm its finding of violation.

Lithuania

ECHR ratified 1995

The first and – so far – the only judgment of the European Court of Human Rights in which Lithuania has been found responsible for breaches of the Convention is the case of Jėčius v. Lithuania (judgment of 31 July 2000), which found violations relating to different aspects of the **right to liberty and security** (Article 5).

The Court found violations of Article 5 para. 1 in that the detention of the applicant had been effected in accordance with the domestic law, but the law itself was not "lawful" within the meaning and for the purposes of Article 5 of the Convention. Preventive detention not relating to the suspicion of the person having already committed an offence was held not to be permitted under Article 5 para. 1; and continuing detention on remand not covered by a detention order, but justified by reference to "having access to the case-file" and to the fact that the case had been transferred to the trial court, was held to be in breach of Article 5 para. 1 because of the lack of precision and foreseeability of the domestic procedure.

A violation of Article 5 para. 4 was found partly because of the existence of the statutory bar on appealing at the trial court against the orders relating to detention.

The very fact that this case (and a few other applications of similar nature) challenging the compatibility of Lithuanian law with the Convention standards was brought to Strasbourg and examined there accelerated the process of amending provisions regulating detention, the result being that at the time of the adoption of the judgment none of the defective provisions the application of which had led to violations of Article 5 in the case of Jėčius v. Lithuania was any longer in force.

Habeas corpus under scrutiny in Malta.

It remains to be seen whether the findings of violations in the same case caused by not applying domestic law properly (i.e. violation of Article 5 para. 3 as to the length of the detention on remand due to failure of the authorities to adduce relevant and sufficient reasons to justify continuing detention, and violation of Article 5 para. 4 due to failure of the court in its decisions authorising the remand in custody to refer to the applicant's grievances about the unlawfulness of his detention) will lead to greater care on the part of domestic authorities in applying national law.

Malta

ECHR ratified 1967

Three recent cases dealt with by the European Court of Human Rights which have had a particularly significant impact in Malta were the Aquilina and Wiffin cases (judgments of 29 April 1999) and Ben Nasr Sabeur Ben Ali (judgment of 29 June 2000). These decisions concerned **bail** and the **legality of an arrest**.

The European Court of Human Rights considered that the appearance before a magistrate in those particular cases was not capable of ensuring respect for Article 5 para. 3 of the Convention because the magistrate had no power to review automatically the merits of the detention. Moreover, the Court examined the domestic court's case-law concerning habeas corpus and the usual duration of domestic court proceedings on applications under Article 5 para. 4. The Court considered that it had not been shown that during this detention on remand the applicant had at his disposal a remedy for challenging the lawfulness of his detention.

Following these cases, amendments have been proposed to the Criminal Code to bring it in line with the European Convention. For the purpose of bail, in certain cases, the person brought before

the Court after arrest had to file an application which had to be sent to the Attorney General for his views as to whether the person should be granted bail or not. This would no longer be required under the new amendments. Moreover, the magistrate would be able to decide on the legality of arrest immediately.

Moldova

ECHR ratified 1997

On joining the Council of Europe, Moldova accepted a series of commitments, including the ratification of the European Convention on Human Rights. The ratification of this instrument was made possible thanks to a government programme, carried out by a working group and organised in co-operation with the Council of Europe, aimed at adjusting existing Moldovan law to the requirements set out in the Convention. This process is continuing.

Within this programme several modifications were made to domestic legislation in order to bring it into line with the European Convention on Human Rights and the case-law of the European Court of Human Rights.

It is particularly worth mentioning the introduction of the principle of adversarial examination in civil and criminal cases, the issuing of arrest warrants through judges (and no longer through prosecutors), access by a detained person to a lawyer within twenty-four hours, the introduction of the right to be assisted by an official defence counsel, the introduction of the perpetual right to get satisfaction from courts against breaches of human rights and liberties, the abolition of death penalty, and the right to compensation in case of judicial error.

Netherlands

ECHR ratified 1954

Dutch criminal proceedings differ from those in common law countries in that most of the evidence is gathered not in open court but in the course of the preliminary inquiry conducted under the auspices of the investigating judge. Ever greater brutality among criminals has increased witnesses' fear of reprisals if they testify against a suspect. In the Netherlands this led in the 1980s to an increase in the use of **anonymous witness** statements in criminal proceedings.

• In its judgment of 20 November 1989 in the case of Kostovski v. the Netherlands, the European Court of Human Rights curbed this trend for the first time. The unbridled use of anonymous witness statements to convict someone was deemed incompatible with the right to a fair trial as enshrined in Article 6 of the European Convention on Human Rights.

The Court's ruling generated heated debate in the Dutch legal world concerning the question of whether evidence deriving from an anonymous source could still be used at all, and if so under what conditions. The use of anonymous witness statements was regulated in due course by successive Supreme Court judgments, sometimes referred to as the Kostovski case-law, together with a new statutory provision. In particular, the rules provided that no one could be convicted exclusively on the basis of such evidence, and assigned a key role to the investigating judge.

• However, the judgment of 23 April 1997 in the case of Van Mechelen and Others v. the Netherlands showed that the new situation could still lead to a violation of the Convention. The Court ruled that the procedures in use insufficiently compensated the defence for the handicaps to which it was subject. As the Netherlands does not possess, to date, any statutory scope for reopening criminal proceedings after a judgment handed down by the Strasbourg Court, the effect of this judgment was that the four applicants, who had been sentenced to long terms of imprisonment for armed robbery, were immediately released by the Minister of Justice and awarded financial compensation by the Court. This understandably provoked a public outcry in the Netherlands.

Just how sensitive is the issue of anonymous witnesses is clear from the fact that not long ago an anonymous witness submitted an application against the Netherlands, alleging that the State had afforded him insufficient protection from the threats issuing from the suspect against whom he had testified.

• By judgment of 4 July 2000 in the recent case of Kok v. the Netherlands, the Court rejected an application concerning the use of anonymous witness statements on the grounds that it was manifestly ill-founded. Hopefully this is a sign that the right balance has gradually been struck between the diverse interests of suspects, witnesses, the public prosecutor and the sound dispensation of justice in general.

Norway

ECHR ratified 1952

On 23 June 2000 the Norwegian Supreme Court – sitting in plenary session – handed down a landmark decision in a case concerning the Norwegian system for **administrative sanctions** against tax evasion. The plaintiff in this case was a Norwegian businessman. Investigation by the tax authorities and the police disclosed both fraud against his customers and serious tax evasion during 1985, 1986, 1987 and 1988. He was convicted in the criminal courts for these crimes in 1991. Subsequently the tax authorities found that he had acted willfully or with gross negligence, and thus decided to impose upon him an increased tax supplement amounting to 60% of the tax evaded. Under Norwegian law this is a purely administrative sanction, which may, however, be subject to review by the courts.

The Norwegian Supreme Court takes account of the case-law of the European Court of Human Rights.

The Supreme Court held that the imposition of an increased tax supplement amounted to a "criminal charge" under Article 6 of the Convention. The Supreme Court based this decision on the case-law of the European Court of Human Rights, especially the Court's judgments in the cases of Bendenoun v. France and A.P., M.P., and T.P. v. Switzerland. Article 6 being applicable, the Supreme Court held that the case (as regards 1987 and 1988) had not been decided within a reasonable time as required by the Convention. In order to afford redress to the businessman, the Supreme Court annulled the tax supplement for 1987 and reduced the tax supplement for 1988 to 30%.

The Supreme Court also discussed the allegation that the imposition of the increased tax supplement violated the principle of *ne bis in idem*, as prohibited by Article 4 of Protocol No. 7 to the Convention. Under the concrete circumstances of this case the Supreme Court was not under an obligation to decide upon this matter.

The judgment of the Supreme Court has put the focus on the use of administrative sanctions, and the protection offered by the Convention to persons who are suspected of e.g. tax evasion. In addition the judgment has sparked off a new interest for the principle of *ne bis in idem*, both in cases of tax evasion and other cases like the withdrawal of a driving licence following a criminal conviction for drunk driving.

San Marino

ECHR ratified 1989

There have been no instances in San Marino of changes in legislation being carried out following a Court judgment. This is because the Great General Council (parliament) has in every case adopted new laws on the basis of applications made to the European Court of Human Rights without waiting for the judgment.

• The case of Buscarini and Others (judgment of 18 February 1999) concerned an alleged violation of Article 9 of the Convention, which protects the freedom of conscience and religion. At its origin was the obligation for new members of parliament to take oath on a copy of the Gospels. The San Marino Government argued that the oath had no religious value, but represented the historical and cultural heritage owed to the Christian traditions which were the basis of the identity and the very existence of the republic (founded early in the 4th century). But the Court's finding of a violation did not require any "general measures" to implement the judgment: Law No. 115 of 29 October 1993, adopted before the application to the European Commission of Human Rights, allowed for members of parliament to take the oath on their honour.

• Before the reform of the judicial system (Law of 18 October 1992) it was alleged that the dual role of investigating judge and trial judge, vested in the same person, would lead to violations of Article 6 para. 1. After examination of the Court's case-law, Law No. 20 of 24 February 2000 was introduced, guaranteeing the public nature of appeal hearings.

Slovenia

ECHR ratified 1994

In December 1991 Slovenia adopted the Constitution of the Republic of Slovenia, which was set out following the example of other modern European constitutions, accurately defining human rights and enabling their direct protection.

After ratification the ECHR became a part of internal state law, which means that it is directly used and hierarchically placed above the laws and provisions thereof. The legal position of the ECHR did not raise much attention at its adoption, because other international conventions were already used in the same way. The content of the adopted Convention was not a novelty since the protection of the human rights and fundamental freedoms was already regulated by the conventions, which were adopted under the protection of the United Nations, and especially by the new Constitution.

But an abstract legal text requires an explanation. With the use of legislation in the field of human rights, which entails a number of legal standards, mere reference to the text of the Constitution and conventions is not enough. Therefore the case-law, set out by the Commission and the Court of Human Rights in Strasbourg, was very welcome and it is of utmost importance. Access to this kind of literature was difficult at the beginning, but today everybody knows the *Short Guide to the European Convention on Human Rights* in its Slovene translation. In some journals it is possible to find also the translations of individual decisions of courts, and access to the literature in English and French is available through the Information and Documentation Centre on the Council of Europe – The National and University Library in Ljubljana.

"Everybody in Slovenia knows the Short Guide to the European Convention on Human Rights"

It is possible to establish that the Slovene courts deciding on legal remedies often decide on cases referring to Article 6 para.1 of the Convention. Where the parties assert essential breaches of the procedural provisions, the courts use mostly the provisions from Slovene procedural laws and abundant case-law, of the Slovene courts. When it is necessary to interpret laws in connection with various conventions and the Constitution, Slovene courts rely upon the established European case-law. This is what the court did, for example, in deciding upon parental responsibilities such as residence and access to children in civil (and not administrative) proceedings, because the law that regulates this field is not reconciled yet with the Constitution and international conventions adopted by the Republic of Slovenia.

In criminal or civil proceedings the courts often decide also in cases of conflict between the right to privacy and the right to freedom of expression and to impart information. In such cases the national courts can only rely on the established case-law of the Commission and Court of Human Rights. They use it, for example, to decide on the boundaries between privacy and public life, on public figures and interference in their privacy, on the meaning of "necessary in a democratic society", on the different purposes of interference (e.g. in literary or artistic works or commercial advertising) and similar.

"Classical" decisions in this field, referred to by domestic and foreign authors, include Dudgeon v. the United Kingdom, Lingens v. Austria, Barthold v. Denmark; and also more recent ones, such as Fressoz and Roire v. France and Bladet Tromsø and Stensaas v. Norway.

Spain

ECHR ratified 1979

• The case of Barberà, Messegué and Jabardo (judgment of 6 December 1988) was of great importance, and necessitated legislative changes to improve procedures, as well as the reopening and overturning of the domestic proceedings following the Court's judgment.

• The second significant judgment is the Court's decision of 28 October 1999 in the case of De la Cierva Osorio de Moscoso, Fernández de Córdoba, Roca y Fernández Miranda and O'Neill Castrillo, which was declared inadmissible. The case concerned the question of male precedence in the handing down of titles of nobility.

In 1988 a decision was made that had a bearing on the rights of the accused in criminal cases – a subject that the drafters of the Convention almost certainly had in mind. In 1999, the question decided by the Court dealt with the inheritance of aristocratic titles – and it is very unlikely that there was any intention, when the Convention was drawn up, of protecting noble titles and their transfer.

The handing down of titles of nobility was the subject of a recent application against Spain.

As we commemorate the 50th anniversary of the Convention, these two examples show how the protection of human rights has evolved.

Sweden

ECHR ratified 1952

The Court's interpretation of the Convention over the last two decades has shown that Swedish legislation and its application have not been altogether consistent with Sweden's obligations under the Convention.

• The first case against Sweden really to attract the attention, not only of public officials but also of the public at large, to the Convention was the case of Sporrong and Lönnroth (judgments of 23 September 1982 and 18 December 1984). The case concerned the effects of long-term expropriation permits and prohibitions on construction with regard to property in Stockholm as a result of town-planning measures. The owners had lacked an opportunity under domestic law to seek a reduction of the time-limits for the permits and to claim compensation. The Court concluded that there had been a violation of the owners' right to the peaceful enjoyment of their possessions (Article 1 of Protocol No. 1). A violation of Article 6 was also found since the property owners were unable to have access to a tribunal in order to have their dispute with the City of Stockholm determined. The applicants were awarded substantial compensation by the Court. At the time of the first judgment, the domestic legislation had already been partly modified. Further legislative amendments were a consequence of the Court's finding of violations in that case.

• While the case of Sporrong and Lönnroth became an eye-opener in respect of the Convention system as such, a series of other cases which followed showed that there existed a deficiency of a more general nature in domestic Swedish legislation (cf. the Pudas judgment of 27 October 1987 (traffic permit), the Tre Traktörer judgment of 7 July 1989 (permit to serve alcoholic beverages), the Skärby judgment of 28 June 1990 (building permit), etc.). The Court's interpretation of the formula "civil rights and obligations" in Article 6 made clear that there was a lack of access to court in different fields where administrative decisions were decisive for the civil rights and obligations of individuals. Already in 1988 the *Riksdag* adopted the Act on Judicial Review of Certain Administrative Decisions. The Act mandated the Supreme Administrative Court to review not only administrative decisions made by different authorities but also those made by the Government in administrative matters directly concerning individuals. Access to court has since then been included in many different parts of the domestic legislation when it comes to provisions concerning appeal.

• A further example of the impact of the Convention on Swedish legislation is the fact that a new system concerning provisional detention and detention on remand pending trial in criminal cases was introduced in 1988. The new system meant that courts had to be in operation and judges on duty also on weekends. This was a result of the Court's finding in the case of McGoff (judgment of 26 October 1984). The case dealt with the question of how long a person could be provisionally detained on remand without court review. The Court had come to the conclusion that the time-period that McGoff had been detained before having been brought before a judge had not been in accordance with Article 5 para. 3 since he had not been brought "promptly" before the judge.

Switzerland

ECHR ratified 1974

The Court's judgment of 29 April 1988 in the **Belilos** case has had considerable repercussions in Swiss law.

The case is, however, trivial in its origins. The applicant had been fined 200 Swiss francs by the city police for having participated in an unauthorised demonstration. Her appeals against the fine did not involve a legal review of the facts, the courts concerned being permitted only to review the law.

In its judgment, the Court held to be invalid Switzerland's interpretive declaration concerning Article 6 para. 1 placing a reservation on such a situation (a reservation considered to be vague and lacking a brief explanation of the laws it was intended to cover). The Court held that the applicant had been deprived of a full and complete review of the merits of the case against her. Article 6 para. 1 had therefore been violated.

Extrapolating from this case-law, the Swiss Federal Tribunal held to be invalid all the interpretive reservations and declarations made by Switzerland concerning Article 6. Hundreds of provisions at federal, cantonal and local levels had therefore to be changed to allow all charges in criminal cases and all disputes concerning civil rights and obligations to be subject to a judicial review on the facts of the case as well as the law.

Turkey

ECHR ratified 1954

In the cases of Incal and Çiraklar (judgments of 9 June and 28 October 1998) the European Court of Human Rights found that the applicants had not had a **fair trial** within the meaning of Article 6 of the Convention, in that the State Security Courts included a regular military officer among the judges.

The participation of serving military officers as magistrates in State Security Courts was covered by Article 143 of the Turkish Constitution, the provisions of which were invoked by the law setting up these courts. Accordingly, in order to implement the judgments of the European Court of Human Rights, the Turkish Government submitted to the Grand Assembly the necessary constitutional and legislative amendments, which were adopted respectively on 18 June 1999 (Act No. 4388) and 22 June 1999 (Act No. 4390). The publication of these laws in the *Official Gazette* on the day of their adoption meant that military judges and procurators ceased to have any function within the State Security Courts as from that date. ■

The Turkish Grand National Council Building

Human rights in the national community

The Danish Centre for Human Rights is one of many national human rights institutes throughout Europe that have a valuable role to play in protecting human rights in the non-judicial field.

Karen Hald, from the staff of the Centre, describes one way it helps to ensure that national legislation and case-law meet human rights standards, by means of an annual "Status report".

Being recognised as a national human rights institute in accordance with the United Nations Paris Principles of 1992, the Danish Centre for Human Rights finds it important not only to deal with human rights abroad – which often appears to be much easier – but sees it as an important challenge also to focus on human rights problems in the national community which the Centre itself is part of. Even though we do not observe human rights violations in Denmark of the same severity as we know them from other parts of the world, it is nonetheless important to keep a close watch on the overall status and development of human rights in the Danish context, and to insist on the maintenance of human rights standards – most notably, to secure a sound foundation for the functioning of democracy. This seems to be true of all western democracies.

In 1999 the Centre launched a new initiative by issuing its first consolidated report: *Human rights in Denmark – Status 1999*. Henceforth, every year in December the Centre will present a report covering the status of human rights in Denmark over the preceding year. The report for 2000 will be issued shortly.

The aim of the *Status Report* is to draw a picture of some of the present human rights problems in national legislation, legal practices and case-law. As such, the *Report* is meant to act as a constant reminder for politicians and government of the work that needs to be done in the area of human rights, as well as a practical tool in the hands of legal practitioners and activists working with concrete human rights issues. Moreover, the language used in the reports is aimed at making it accessible to the population at large.

The *Report* is based, first of all, on comments on Parliamentary decisions and administrative practices issued by the Centre in a number of fields. Additionally, the *Report* gives a survey of decisions from Danish courts and the Parliamentary Ombudsman which, in whole or in part, pertain to human rights, as well as decisions from the European Court of Human Rights in cases concerning Denmark. Also, international criticism of Denmark from the European Council and United Nations bodies is recorded. Finally, the *Report* contains a brief collection of headlines from the public debate on human rights-related issues in Denmark.

The *Report* does not represent a thorough evaluation of Danish law in relation to human rights obligations. But it is the Centre's aim to create an easily accessible survey of areas of concern already pointed at either by international bodies or by the Centre itself through its research or through the comments on laws and legal practices which constitute an important part of the Centre's work.

The examination of the many different cases in the 1999 *Status Report* underlined the fact that the principal duty of human rights is to protect the weakest human beings in society or persons who are subjected to wider societal discrimination, e.g. suspects, prisoners, ethnic minorities and welfare recipients.

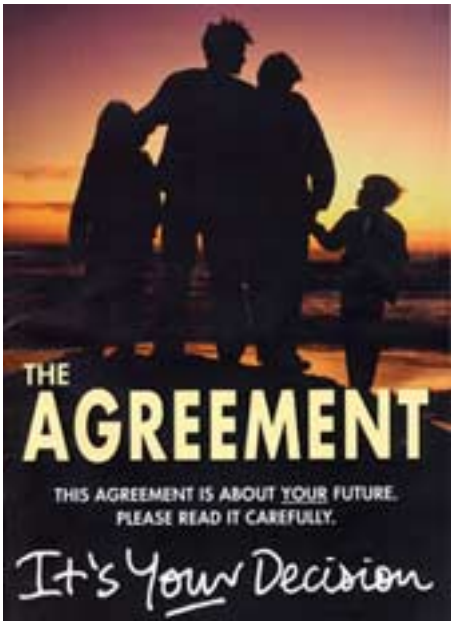
Protection of aliens

Apart from the fields of police investigation, criminal procedures and conviction which traditionally call for human rights attention, Denmark's problems with human rights standards are particularly acute in relation to legislation concerning immigration. In recent years the further restrictions of the Aliens' Act have decreased the legal protection of aliens entering or residing in Denmark. This is particularly the case with asylum-seekers or aliens coming from so-called "asylum-producing" countries. Furthermore, the area of health and social affairs forms a particular group of interest in the report. In earlier days it was not common to talk about human rights in health and social affairs. This has changed somewhat, and today increasing attention is given to protection of individuals who require assistance from the authorities. Naturally, this is the case when treatment or assistance is given by force, but also when it is received voluntarily. Not least because it is often the weakest groups of society who are being taken care of by the authorities in this field; the mentally ill, the elderly and children.

Taking human rights further

After fifty years, the European Convention on Human Rights has made its way into the legislations and practices of over forty states. But is this protection at international level sufficient?

An NGO active in human rights protection, the *Committee on the Administration of Justice* (Northern Ireland), was awarded the Council of Europe Human Rights prize in 1998. Its Programme Officer, Maggie Beirne, argues that national or regional Bills of Rights (such as that proposed for Northern Ireland under the *Good Friday Agreement*) can be the logical complement to the European Convention on Human Rights.



As Northern Ireland stumbles towards the creation of a society more at peace with itself, it is clear that this society must be more just, and that equality, non-discrimination, and the human rights of all within society, must be at its core. In recognition of this, the Good Friday Agreement signals in its language, and in the institutions and initiatives it created, that human rights is the linchpin of the peace-building exercise. This message in turn is at the heart of the major reviews undertaken into the future of policing in Northern Ireland and the reform of the criminal justice system. While there is a long way to go – and indeed it is difficult to see how we can achieve a society respectful of human rights when emergency legislation still applies (and has done so in this jurisdiction for more than seventy years) – the journey has at least begun.

Perhaps one of the most crucial staging-posts on this journey will be the elaboration by the people of Northern Ireland of a Bill of Rights. Uniquely in the United Kingdom, it has been recognised that a codified enumeration and elaboration of people's rights could be an important tool for future stability.

Beyond the Convention

Whereas the European Convention on Human Rights has now been incorporated into domestic legislation (a very recent development), observers are hopeful that the Bill of Rights for Northern Ireland will go well beyond the Convention.

The intention will be to benefit from human rights advances over the last fifty years, and update and expand upon the civil and political rights laid down in the 1950s

The Good Friday Agreement called for rights supplementary to the European Convention to be written into a Bill of Rights, so the intention will be to benefit from human rights advances over the last fifty years, and update and expand upon the civil and political rights laid down in the 1950s. Secondly, and very importantly, it is to be hoped that the Bill of Rights will draw extensively on the Revised European Social Charter, which the United Kingdom has signed but not ratified. Human rights abuses have

not in the past been confined solely to the civil and political realm. Socio-economic inequalities and the legacy of discrimination are still very much in evidence in Northern Ireland, in terms of educational attainment, standards of health, and employment opportunities. The indivisibility and importance of civil, political, economic, social and cultural rights are experienced as a daily reality on the ground in Northern Ireland. There is a widespread recognition of the need to succeed in creating a Bill of Rights that addresses that reality effectively if we are to underpin the gradual transition to peace.

Intergovernmental initiatives

The effort locally, however, draws great sustenance from a sense of international and regional solidarity. Local efforts at putting human rights at the heart of the peace-building are greatly encouraged by intergovernmental initiatives such as the Human Rights Prize.

In awarding this prize, the Council of Europe sends several important messages to the wider public about the protection and promotion of human rights generally. The fact that the award of the Prize is decided upon by the Committee of Ministers, representing the Governments of over forty member states, clearly signifies that efforts to protect human rights are considered to be very important and worthwhile. Moreover, human rights activists are occasionally decried for being "anti-state" or anti-government. Yet the awarding of a human rights prize by the very government officials who are criticised by human rights activists highlights that the protection of rights is a responsibility shared by us all in different ways.

Martin O'Brien, executive director of the Committee on the Administration of Justice, during the award ceremony of the European Human Rights prize 1998.

In the Northern Ireland case, the Prize held particular significance. Firstly, it emphasised that human rights abuses, and the struggle against them, are as relevant in countries that are considered on the world stage as mature democracies, as in new member states of the Council of Europe. Secondly, it emphasised that human rights abuses and conflicts are often, if not always, intimately linked, and that consequently the creation of effective human rights protections is a necessary, if not always sufficient, pre-requisite for the establishment of political stability and peace.

But the contribution of the Council of Europe to the peace process can be much greater still in future. The United Kingdom government has experienced great difficulty in translating good positive human rights principles into legislative form, and trenchant criticisms have been made, for example, of the policing and the criminal justice initiatives taken to date. Continued external scrutiny is vital if we are to ensure that the aspirations of the Good Friday Agreement are to be turned into reality on the ground. Everyone concerned about peace in Northern Ireland should continue to emphasise the central importance of human rights to any search for peace. They should counter the forces of inertia and fear and maintain the pressure for expeditious change. They should continue to monitor local developments and lend their expertise to the internal debates that are bound to rage around the exact content of a Bill of Rights.

In doing this, people far beyond these shores can help the people of Northern Ireland give real meaning to the "new beginning" presaged by the Good Friday Agreement.

More than a game

For over fifteen years the Council of Europe and the association Juris Ludi have been organising one of the world's most prestigious moot court contests to be held in French: the René Cassin Competition.

In this year's competition more than 250 law students took part, representing 62 universities in 24 countries, not just from Europe, but also from Africa and the Americas.

The teams were called upon – by drawing lots – to speak on behalf of either the applicant or the defending government in a fictitious case under the European Convention on Human Rights involving alleged violations of the rights of aliens and freedom of movement.

We asked the winning team, representing the University of Heidelberg in Germany, to give us their impressions.

Before you took part in the René Cassin Competition, what did you know about the Convention?

At German university we didn't study the Convention at all during our first two years. It wasn't until our third year, which we spent at the University of Geneva on an exchange programme, that we got to know it. In Germany the Convention is only studied as an option, because the course concentrates on the fundamental rights embodied in the constitution.

> The feeling of belonging to a nation seems to be giving way to one of belonging to a common European culture.

We had an idea, before the competition, that there was a distinction between fundamental rights and human rights. To us, "human rights" meant the sort of serious violations seen in countries known for their totalitarian regimes.

And now?

We now realise the immense importance and practical scope of the Convention. It doesn't just have an impact on the life of the applicant – who, as well as giving his or her name to the case, is a human being whose life may be changed by the Court's decision. It also has everyday consequences for all Europeans in various spheres, such as the right to respect for private and family life in the face of nuisances caused by community amenities, the inheritance rights of children born outside marriage, the wearing of religious insignia, and many others too numerous to mention.

What did you learn from your experience as "defence lawyer" for the government?

The role made us realise that it may sometimes be necessary to limit the rights of the individual – who, in the minds of the general public, is always the underdog to be championed. Public interest, the defence of which falls to the State, may take priority.

Speaking as German law students, is there any aspect of the Court's case-law that you found surprising?

Called to the bar: the University of Heidelberg's winning team. From left to right: Heike Stadtmüller, Nicola Vennemann, Christian Maierhöfer.

The Court's case-law does reflect the diverse legal traditions of the States Parties, and is sometimes different from that of our national courts. For instance, we could cite the example of State interference. In Germany the Courts can find a non-violation of the Basic Law on two grounds: either that the alleged violation concerns a right not protected under the Law, or that it concerns such a right but the interference is justified. The European Convention on Human Rights, in several of its provisions, establishes the same principle, but the terms used by the Court do not always cite it in such a strict form. Another difference is that in Germany the courts depend far less on inherited jurisprudence than does the European Court of Human Rights. This is evidence, in particular, of the influence of common law jurisdictions.

The René Cassin Competition is also an opportunity to meet and exchange views with students from different backgrounds. Were you able to compare your ideas with those of teams from other countries?

Yes, we were surprised that even within Europe there are different notions of the tolerance level at which it is accepted that a violation of human rights has taken place. It has made us appreciate the function of the Court as a "melting-pot" for the different conceptions of justice, leading to a system that guarantees the fair implementation of the Convention.

What have you learned about the development of the Court's case-law?

We were particularly struck by the changing role of the "national judges". Despite the guarantees contained in the Convention itself regarding their independence, in the past national judges have had a tendency sometimes to support the position of their own governments. Now we see the opposite: dissenting opinions from the national judge in a case decided in favour of his or her own state. The feeling of belonging to a nation seems to be giving way to one of belonging to a common European culture.

What hopes do you have for the future of the Convention?

We would like to see the current Court making use of liberal and progressive interpretations, continuing the practice established by the old Court, which showed itself capable of going beyond the strict terms of the Convention to develop its case-law. We are thinking, for example, of the use made of Articles 3 and 8 to protect aliens in expulsion cases.

René Cassin wanted the participants in the competition not merely to take on the role of counsel for the defence of rights, but to be imbued with the spirit of the Convention and become "foot-soldiers for the cause of human rights". Was this the case with you?

Taking part in the competition has instilled in us the obligation to respect and to ensure respect for human rights. It will certainly affect our behaviour and our conception of what is right in our future legal careers – for instance, in areas like the protection of private life or procedural guarantees. And this is not in order to avoid appeals to the European Court of Human Rights but rather because it has become something essential to us.

"I am entirely convinced that it is by means of events like the René Cassin Human Rights Competition that we can educate the mind to an awareness of human rights, and thus turn the concept into reality."

Boutros Boutros Ghali,
president of the final
of the 1999 competition

European Ministerial Conference on Human Rights

ROME, 3-4 NOVEMBER 2000 – On the occasion of the 50th anniversary of the Convention, the European Ministerial Conference on Human Rights brought together ministers responsible for human rights from over fifty states, in Europe and beyond.

On the following pages we present an overview of the event: the outline programme, the introductory speeches, the declaration and the two resolutions adopted by the conference, and a look at Protocol No. 12 to the European Convention on Human Rights, which was opened for signature in Rome.

The complete proceedings of the conference will be published by the Council of Europe in 2001.

Certain speeches and contributions have been translated only for the purposes of this Bulletin*, and have no official status.*

From left to right: Lord Russell-Johnston, President of the Parliamentary Assembly of the Council of Europe; Hans Christian Krüger, Deputy Secretary General of the Council of Europe; Walter Schwimmer, Secretary General of the Council of Europe; and Piero Fassino, Italian Minister of Justice.

Europe's flags outside the Palazzo della Farnesina, headquarters of the Italian Foreign Ministry and venue for the conference.

Outline programme

Friday, 3 November 2000

Speeches

Secretary General of the Council of Europe, Mr Schwimmer

Italian Minister for Foreign Affairs, Mr Lamberto Dini

President of the Parliamentary Assembly of the Council of Europe, Lord Russell-Johnston

Presentation of sub-themes I and II and opening of discussions

Sub-theme I: Institutional and functional arrangements for the protection of human rights at national and European level

Sub-theme II: Respect for human rights, a key factor for democratic stability and cohesion in Europe: Current issues

Saturday, 4 November 2000

Adoption of political texts concerning the sub-themes (resolutions) and the theme (declaration)

Commemorative ceremony for the 50th anniversary of the European Convention on Human Rights

Ceremony for the opening for signature of Protocol No. 12 (non-discrimination) to the European Convention on Human Rights

Delegations attending the conference

Member states of the Council of Europe

Albania
Andorra
Austria
Belgium
Bulgaria
Croatia
Cyprus
Czech Republic
Denmark
Estonia
Finland
France
Georgia
Germany
Greece
Hungary
Iceland
Ireland
Italy
Latvia
Liechtenstein
Lithuania
Luxembourg
Malta
Moldova
Netherlands
Norway
Poland
Portugal
Romania
Russia
San Marino
Slovakia
Slovenia
Spain
Sweden
Switzerland
"The former Yugoslav Republic of Macedonia"
Turkey
Ukraine
United Kingdom

States having observer status with the Council of Europe, and other non-member states

Holy See
United States of America
Canada
Japan
Mexico
Armenia
Azerbaijan
Bosnia and Herzegovina
Monaco
Yugoslavia

Non-governmental organisations

Aire Centre
Amnesty International
International Federation of Human Rights Leagues (FIDH)
Marangopoulos Foundation for Human Rights (MFHR)
European Centre [Albania]

Walter Schwimmer

Secretary General of the Council of Europe, speaking at the opening session

Allow me first to express my deep thanks to the Italian Government for its initiative of convening this ministerial conference on the occasion of the 50th anniversary of the European Convention on Human Rights. This excellent initiative allows us not only to look at the results achieved over the last fifty years, but also and above all to discuss the question raised in the main theme of this Conference: "What future for the protection of human rights in Europe"?

This conference comes at an appropriate moment. Europe, and the Council of Europe, have undergone profound changes over the last decade. At the informal ministerial conference on human rights held ten years ago here in Rome, there were 23 delegations of member states seated at the conference table. It suffices to look around this table today to note the tremendous scale and speed of the enlargement of the Council of Europe since 1990. It is also a great pleasure to note the presence today of representatives of several non-member states, including states that have applied for membership and observer states of the Council of Europe. The same is true for representatives of other international organisations and institutions as well as non-governmental organisations.

Europe has changed, and it has definitely changed for the better. The values and principles for which the Council of Europe stands – democracy, rule of law, human rights – are now shared in a greater Europe. This is both an immense source of joy and a momentous challenge. For we all know from our experience in the last ten years that it is not an easy process to anchor those principles and values firmly in all branches of government and in all parts of society. It involves hard work, and the Council of Europe has worked, and works, very hard to protect and promote its values and principles throughout the continent, and especially in the new member states and candidate states.

Courageous choice

The process of enlargement of the Council of Europe is nearing its completion. We are expecting soon new member states in the

organisation. And a few weeks ago the people of Serbia made a very courageous choice which will smooth the way for them to join the European family of democracies. We should therefore use the opportunity offered by this Conference and the experience gained over the last decade to discuss where Europe stands and where it should go in an area that is crucial for its identity and its stability: the protection of human rights.

More particularly, the two sub-themes chosen for the Conference are sufficiently broad to enable us to fix priorities for the future. Sub-theme I concerns, first of all, our institutional machinery for human rights protection. The enlargement of the Organisation has had a deep impact on the control system of the European Convention on Human Rights and our other human rights mechanisms, and several new mechanisms have also been created in the last ten years. We should examine how to maintain and improve their effectiveness in the years to come. The European Convention on Human Rights must remain the backbone of human rights protection in Europe, and I am pleased to note that the draft European Union Charter of Fundamental Rights recognises this. The Council of Europe observers to the Convention drafting the European Union Charter text insisted on the necessity to incorporate explicit references to the Euro-

pean Convention on Human Rights thereby guaranteeing an equivalent level of protection and even offering scope for further progress. And an additional very useful step would be as already proposed by Finland if the European Communities would consider the accession to the European Convention on Human Rights.

Improvements possible

Full execution of judgments of our Court of human rights is essential and we must never compromise on this point. None of our human rights mechanisms operates in isolation: they are in constant interaction with the national level. We should also look at improvements that are possible in respect of the various national arrangements for the protection of human rights.

The second sub-theme allows us to discuss a number of current human rights challenges which in the longer or shorter term pose a threat to the stability of our continent and our societies. This obviously includes the question of serious and massive violations, also in situations of conflict or crisis. In the past, this item would have been unthinkable as a topic on the agenda of a high-level meeting of the Council of Europe. Today, it is a necessary topic for discussion, for we should indeed draw lessons from our experiences in order to do better in the future. For my part, I have taken the unprecedented step of using the powers of investigation under Article 52 in respect of a single State Party in relation to the conflict in the Chechen Republic of the Russian Federation. The Council of Europe is for the time being the only international organisation which maintains a presence in the area. Our three experts have just begun their second six-month mandate. Their eye-witness reports furnish us with first hand information and allow us to act and bring pressure on the competent authorities to identify and search for missing persons. The Council of Europe experts have also contributed to the re-establishment of the court system on the territory of the Chechen Republic. The population of this war torn region depend on and encourage the Council of Europe to help normalise life in Chechnya.

I am pleased that the abolition of the death penalty, a clear priority for the Council of Europe, will also be on the agenda of this Conference. Europe is now a death penalty-free zone, and this should also entail the abolition of the death penalty in time of war.

The Council of Europe has changed into a more political and more operational organisation. One thing has not changed: the protection of human rights is and remains at the heart of its mission. This Conference should give fresh impetus for political decisions and strengthen active human rights protection all over Europe.

Lamberto Dini

Italian Foreign Minister, speaking at the opening session

On behalf of the Italian Government, I should like first of all to welcome all the esteemed participants in the Ministerial Conference on Human Rights, which we have the pleasure of hosting here in Rome. We are here also to commemorate the fiftieth anniversary of the European Convention on Human Rights in the city where it first saw the light of day.

This conference will also offer the opportunity to reaffirm and update the message of peace and civilisation which the Council of Europe has helped to spread over fifty years of its activities.

On 5 May 1949 the Statute of the Council of Europe was signed in London. Thus was born a far-seeing workshop for ideas and content of a high ethical value, led by a vanguard of ten sovereign states committed to a process of political *rapprochement,* to the concept of putting national instruments to common use and creating an influence shared by all in the future.

At the time, the hopes raised by the signature of the Treaty of London were high, in particular for those who, with the horror of the second world war still fresh in their memory, saw the Consultative Assembly – which brought together, for the first time, parliamentary representatives of different European states – as the expression of the mutual democratic will of the people of the old continent.

The Council of Europe made an essential contribution to the respect and protection of fundamental human rights.

I firmly believe in the important achievements in the field of codifying rights: the 1961 European Social Charter and its 1996 revision, the European Convention for the Prevention of Torture of 1987, the Convention for the Protection of National Minorities of 1995, and, especially, in the twelve protocols that have extended and enriched the Convention signed in Rome in 1950. But at the same time, I think also of the long work of the European Commission and Court of Human Rights in establishing the substantial case-law relating to the Convention.

Yet the road before us is still a long one. Every day we are made aware of serious and repeated violations of human rights, of even the most fundamental among them. In too many countries, too many people see their dignity despised and humiliated, often in the face of general indifference.

The Council of Europe has fulfilled, convincingly and consistently, its role as the conscientious watchdog of the continent, so attracting the respect and attention of those countries that saw the Council as the guarantor and defender of fundamental freedoms.

Let us remind ourselves that the Council of Europe has changed from an organisation of 23 member states to one encompassing 41 today. This is a proof that the totalitarian regimes of central and eastern Europe have not been able, among the peoples they have held subject to their authority, to quash their aspirations towards democracy, freedom and justice; nor to eradicate from their consciousness these same aspirations which ultimately manifested themselves both inevitably and irresistibly.

The 1993 Vienna Summit of heads of state and government confirmed the indivisible and iterdependent nature of human rights. It is this facet of their character which has led the Council of Europe towards more effective protection systems, including also, with the adoption of the Social Charter, economic and social rights. The Charter has become a very useful instrument for reducing social tensions and guaranteeing decent living and working conditions.

Growing awareness

The very nature of the Council of Europe and the scope of its undertaking necessitate a profound and timely reflection on the way forward to ensure it correct functioning. I am thinking, for example, of the European Court of Human Rights, which finds itself today faced with an increasing number of potential applications from a population of some 800 million individuals, whose growing awareness of their rights can only increase this tendency.

This conference can be the venue and the occasion for assessing the progress already made and for defining the perspective of the Council of Europe's future action.

The outcome of our discussions will show, I am sure, the attention paid by the Council to social phenomena likely to worsen the situa-

tion, to introduce difficulties or even danger threatening the harmonious development of our society.

On this point, the European Conference on Racism, Racial Discrimination and Xenophobia, which I had the honour to chair last October in Strasbourg, was a most successful experiment in collaboration between government delegations, specialised organs, independent experts and representatives of civil society; it constituted a unique event which gave the Council of Europe the opportunity to reaffirm its role as a source of ideas and initiatives in the search for new solutions adapted to the real world.

Once more, our organisation and the countries that belong to it were able to give a lucid analysis of the principal ills that beset modern European society, drawing up a realistic account, without complacency or false modesty, of the serious difficulties which all western countries may have to face in the present socio-economic climate. In addition to the alarming resurgences of racist behaviour, the Strasbourg conference expressed concern, in particular, at the manifestations of xenophobia and intolerance directly related to the migration flows of recent years, which have drawn our attention to grave social, legal and humanitarian problems. On the basis of contemporary law and guarantees concerning fundamental freedoms, Europe must commit itself to the drawing up of new codes of conduct aimed at protecting the weakest in society, and thus allow us to strengthen the values of the solidarity of mankind and respect for peoples who, having grievously suffered in wars, now aspire only to a better and fairer way of life.

And we must not forget, in our enumeration of the deprived members of society, those subjected to the most heinous and barbarous forms of exploitation. I am thinking of trafficking in women and children, of the victimisation of immigrants, who are often used as virtual slaves by organised crime in drug dealing and other illicit activities.

We must condemn such activities high and loud, without reserve or hesitation, to help bring about maximum collaboration between the countries of origin, of transit and of destination of these unfortunate masses. We must eliminate criminal activity and restore to these individuals the right to lead a decent life.

It is Europe's task, in the first place, to fight against such clandestine phenomena and to oppose the exploitation of these people's lack of hope, by means of agreements, on-the-spot training and development initiatives in the countries of origin. To those who have already fallen victim to these odious traffickers we should show our solidarity with their suffering and the abuse of their dignity.

That is why I believe that the Council of Europe can be legitimately proud to welcome into the great family of international legal instruments the new Protocol No. 12 to the European Convention on Human Rights covering non-discrimination. Appropriately, we shall be signing this tomorrow at the Campidoglio. It represents one of the most progressive international agreements in the field of the fight against racism.

Fixed criterion

To conclude, I should like to recall a theme which traditionally recurs in the thoughts and conduct of the Council of Europe: the abolition of the death penalty. Since Protocol No. 6 to the European Convention on Human Rights was adopted in 1983, the abolition of capital punishment has been a constant and common priority of our organisation. The battle fought by the Council of Europe has become in recent years a fixed criterion in the evaluation of prospective member states' ability to preserve the life of their citizens. And on this subject I should like to pay tribute to the parliamentary side of the Council of Europe. Without the zealous action of the Strasbourg Assembly, it would never have been possible to attain our goal. This fight for fairness represents the latest and greatest in a long series of measures aimed at strengthening respect for human dignity and the fundamental rights of the individual.

This is why Italy, at the end of its six-month chairmanship, will present to the Committee of Ministers on 9 November a solemn declaration in favour of the creation in Europe exempt from the death penalty.

Life is our most precious possession. Progress, social advances, economic development, are phenomena that influence the ordered march of society. The globalisation of the economy, of trade and of means of communication, the discoveries in the fields of science and technology, even the evolution of human thought, have all helped to revolutionise our habits, our way of learning, of working, of speaking. I believe we are making our way towards a new order of things.

Yet the constant advance towards the future, so exhilarating yet also so confounding, should not make us lose sight of what lies at the centre of this universe driven by dynamic events: humankind.

Humankind, with their hopes, their utopias, their rights: right to life, right to respect.

It is up to us first and foremost, fellow-members of the Council of Europe defenders of democratic values of liberty and pluralism everywhere, to make sure that these hopes, utopias and rights are not obscured and oppressed.

Lord Russell-Johnston

President of the Parliamentary Assembly of the Council of Europe, speaking at the opening session

Your Excellencies, ladies and gentlemen,

I have been repeatedly told by our hosts that I should not speak for longer than four minutes. It would be against my humble nature not to comply with this request, so you will perhaps forgive me if, in these circumstances, I leave out rhetoric and platitude. This gathering of ministers, and the occasion we are celebrating, are too important to be wasted on empty verbiage.

As we meet here in Rome to celebrate the 50th anniversary of the European Convention on Human Rights, more than fifteen thousand registered applications are pending before its Court. More than seven hundred letters are received every day and almost two hundred telephone calls. From all over Europe.

These are not empty statistics, and should not be treated as such. Behind every application there is a human life, a story, sometimes plain and ordinary, but often tragic. But behind every letter, every call and every visit to the Court's headquarters in Strasbourg, there is hope. Hope that grievances will be heard. Hope that wrongs will be made right. Hope that justice will be done.

It is this hope, and trust, of hundreds of millions of people living in Europe, from Grozny to Rome to the Isle of Skye, that should set our agenda for today. When we all leave for our capitals, let us not leave behind only empty declarations and speeches.

Our mechanism for the protection of human rights, unique in the whole world, needs a renewed commitment, political and financial, to continue to do what it was set up, and what the people in Europe expect it to do, that is deliver justice, and protect the rights of Europe's citizens, against the might of Europe's states.

Concrete acts

This is an expectation that cannot be fulfilled through diplomatic shoulder-clapping, but only through concrete acts, which are:

– Firstly, the Conventions and the Court's primacy in human rights questions in Europe cannot be endangered.
– Secondly, additional money, to meet the exponently growing burden of applications, must be made available.
– And thirdly, the Court's decisions must be respected. Unconditionally and by all.

In conceiving and creating the Convention in the aftermath of the second world war, our predecessors showed great vision, resolve, and political courage.

Fifty years later, we have an opportunity to demonstrate that we too can act with the same resolve, vision and courage. Not for our own glory, but for the ideals we believe in. The ideals of justice and human rights. The ideals that safeguard our freedom.

Ministerial Conference on Human Rights

Rome, 3-4 November 2000

Adopted texts

Declaration

In the Political Declaration the heads of delegation of the forty-one member states and the nine non-member states attending the ministerial conference pay a clear tribute to the real progress achieved in Europe in the field of human rights protection over the last fifty years; but they also deplore the fact that mass violations of the most basic human rights continue to be committed throughout the world, including Europe. They stress the primary responsibility of member states to ensure respect for human rights by constantly ensuring that their legislation and practice comply with the European Convention on Human Rights and scrupulously enforcing the judgments of the European Court of Human Rights.

In addition, they reaffirm the central role which the Convention must continue to play as a constitutional instrument for European public order, as the precondition for the continent's democratic stability. The declaration welcomes the growing interest of the European Union in human rights as shown by the recent drafting of a Charter of Fundamental Rights. But it stresses the need to identify the means of avoiding any situation of competition, or even conflict, between two different systems for human rights protection, as this would be liable to undermine overall protection for human rights in Europe.

The European Convention on Human Rights at 50: What future for the protection of human rights in Europe?

The European Ministerial Conference on Human Rights ("the Conference"), meeting in Rome on the 50th Anniversary of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"), opened for signature in Rome on 4 November 1950;

Recalling that the inherent dignity of every human being is the basis of human rights;

Reaffirming the central role of the Council of Europe in the promotion and protection of human rights in Europe and the eminent position of the Convention, with its unique system of control, as a concrete realisation of the Universal Declaration of Human Rights with regard to civil and political rights;

Emphasising the impact of the Convention and the case-law of the European Court of Human Rights ("the Court") on the States Parties, and the resulting unification in Europe and welcoming the significant progress achieved in this respect across our Continent and notably, through the enlargement of the Council of Europe after 1989, in new member states;

Stressing that the Committee of Ministers' function of supervising the execution of Court judgments is absolutely essential for the effectiveness and credibility of the control system of the Convention;

Expressing willingness to strengthen further the human rights mechanisms of the Council of Europe, and in particular the control mechanism set up by the Convention, to enable them to continue to perform their function of protecting human rights in Europe;

Welcoming the commitment of other international organisations to the advancement of human rights on the continent;

Welcoming the increasing attention given to human rights within the European Union, as expressed recently through the elaboration of a Charter of Fundamental Rights;

Pays tribute to the real progress in human rights protection made in the past 50 years;

Deplores the fact that, nevertheless, massive violations of the most fundamental human rights still persist in the world, including in our continent, and calls upon states to put them to an end immediately;

Recalls that it falls in the first place to the member states to ensure that human rights are respected, in full implementation of their international commitments;

Calls upon all member states, to this end, to ensure constantly that their law and practice conform to the Convention and to execute the judgments of the Court;

Believes that it is indispensable, having regard to the ever increasing number of applications, that urgent measures be taken to assist the Court in carrying out its functions and that an in-depth reflection be started as soon as possible on the various possibilities and options with a view to ensuring the effectiveness of the Court in the light of this new situation;

Stresses the need for synergy and complementarity between the Council of Europe and other institutions, particularly the United Nations, the OSCE, and the European Union, each acting in co-operation with the others and within its own field of competence.

Stresses also the need, in regard to the European Union Charter of Fundamental Rights, to find means to avoid a situation in which there are competing and potentially conflicting systems of human rights protection, with the risk of weakening the overall protection of human rights in Europe;

Expresses the wish that the Council of Europe bring together all European states and **calls on** the latter to make the necessary progress in the fields of democracy, the rule of law and human rights, in order to achieve a greater unity in those key fields for the stability of the continent;

Reaffirms that the Convention must continue to play a central role as a constitutional instrument of European public order on which the democratic stability of the Continent depends.

Resolutions

Together with the Political Declaration, the two political resolutions constitute the backdrop for the Council of Europe's policy in the field of human rights protection for the next few years.

***Resolution I** stresses the need to improve the implementation of the Convention in member states; to guarantee the efficacy of the European Court of Human Rights (through early identification of the most urgent measures needed to assist the Court in the discharge of its duties and launching in-depth reflection on possible solutions for guaranteeing the Court's long-term efficacy); and to improve the machinery for Committee of Ministers' supervision of the execution of the judgments of the Court.*

Resolution I

Institutional and functional arrangements for the protection of human rights at national and European level

1. The European Ministerial Conference on Human Rights ("the Conference"), meeting in Rome on the 50th Anniversary of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"), opened for signature in Rome on 4 November 1950;
2. Noting with satisfaction the outstanding work accomplished in Europe over the last fifty years with regard to the protection and development of human rights, and stressing the unique and crucial role played in this respect by the Convention and its judicial enforcement machinery;
3. Stressing that the development of the legal protection of human rights within the framework of the Council of Europe constitutes a significant contribution towards the realisation of the aims stated in the Charter of the United Nations and of the rights stated in the Universal Declaration of Human Rights;
4. Recalling the political impetus given to the human rights work of the Council of Europe at the First and Second Summits of Heads of State and Governments of 1993 and 1997;
5. Noting, however, that there remains a need to reinforce the effective protection of human rights in domestic legal systems as well as at the European level;
6. Calling upon the member states of the Council of Europe to give new impetus to their commitments in the human rights field, essential for the security and the well-being of individuals and for the stability of the continent;

A. Improving the implementation of the Convention in member states

7. Recalling that the Convention contains common basic standards that must be implemented at national level;
8. Recalling that the status of member state of the Council of Europe implies respect for the obligations under the Convention;
9. Recalling the subsidiary nature of the control mechanism of the Convention, which presupposes that the rights guaranteed by the Convention should, first and foremost, be fully protected at national level and implemented by national authorities, in particular the courts;
10. Stressing that everyone whose rights and freedoms, as set forth in the Convention, are violated shall have the right to an effective remedy before a national authority in accordance with Article 13 of the Convention;
11. Welcoming the efforts made by member states to give full effect to the Convention in their domestic law and to conform to the judgments of the European Court of Human Rights ("the Court");
12. Welcoming in this respect the fact that the Convention has been given direct effect in the domestic legal order of almost all member states,
13. Stressing, in any case, the need to improve even further the implementation of the Convention by the member states,
14. **Encourages** member states to:
    i. ensure that the exercise of the rights and freedoms guaranteed by the Convention benefits from an effective remedy at national level;
    ii. undertake systematic screening of draft legislation and regulations, as well as of administrative practice, in the light of the Convention, to ensure that they are compatible with the latter's standards;
    iii. ensure that the text of the Convention is translated and widely disseminated to national authorities, notably the courts, and that the developments in the case-law of the Court are sufficiently accessible in the language(s) of the country;
    iv. introduce or reinforce training in human rights for all sectors responsible for law enforcement, notably the police and the prison service, particularly with regard to the Convention and the case law of the Court;
    v. examine regularly the reservations they have made to the Convention with a view gradually to withdrawing them or limiting their scope;
    vi. consider the ratification of protocols to the Convention to which they are not yet Party.

B. Ensuring the effectiveness of the European Court of Human Rights

15. Paying tribute to the exceptional achievements of the Court and the former European Commission of Human Rights;
16. Concerned by the difficulties that the Court has encountered in dealing with the ever-increasing volume of applications and considering that it is the effectiveness of the Convention system which is now at issue;

17. Noting with interest the creation by the Committee of Ministers of the Council of Europe of the Liaison Committee with the European Court of Human Rights on 11 April 2000 which has the task of maintaining a dialogue between the Committee of Ministers and the Court on the future of the protection of human rights in Europe and on questions relating to the Court,
18. **Calls upon** the Committee of Ministers to:
    i. identify without delay the most urgent measures to be taken to assist the Court in fulfilling its functions;
    ii. initiate, as soon as possible, a thorough study of the different possibilities and options with a view to ensuring the effectiveness of the Court in the light of this new situation through the Liaison Committee with the European Court of Human Rights and the Steering Committee for Human Rights.

C. Improving the Committee of Ministers' supervision of the execution of Court judgments

19. Stressing the importance of the supervision of the execution of judgments for the effectiveness and credibility of the control system of the Convention;
20. Convinced of the need to exercise optimum supervision of the execution of Court judgments, which would help to avoid new violations, and to render such supervision more transparent;
21. Welcoming the adoption of Recommendation No. R (2000) 2 of the Committee of Ministers to member States on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights,
22. **Calls upon** the Committee of Ministers to:
    i. continue consideration of the ways in which this supervision can be made more effective and transparent;
    ii. pursue the revision of its Rules of Procedure concerning Article 46 of the Convention;
    iii. pursue examination of issues such as the necessity to keep applicants better informed during the supervision phase, the possible re-opening or re-examination of the case, and possible responses in the event of slowness or negligence in giving effect to a judgment or even non-execution thereof;
    iv. keep the public better informed of the result of the supervision phase.

D. Improving the protection of social rights

23. Recalling the indivisibility and interdependence of all human rights;
24. Recalling the contribution of the case-law of the Convention to the protection of social rights;
25. Reaffirming the importance of the European Social Charter (1961) and the Revised Social Charter (1996) and recalling that a new decisive impetus for the Charter was given by the Declaration of the second Summit of Heads of State and Government (Strasbourg, 10 - 11 October 1997), which called for the widest possible adherence to the Charter, and welcoming the ratifications which followed or which are being processed;
26. Welcoming the adoption of Recommendation No. R (2000) 3 of the Committee of Ministers to member States on the Right to the Satisfaction of Basic Material Needs of Persons in Situations of Extreme Hardship,
27. **Encourages** member states to accept the greatest possible number of provisions of the European Social Charter and Revised European Social Charter, to ratify the Protocol relating to collective complaints, to apply fully in their domestic systems those provisions of the Charter which they have accepted and to implement the above-mentioned Recommendation No. R (2000) 3;
28. **Invites** the Committee of Ministers to continue consideration in order to improve the protection of social rights in Europe, including through intergovernmental co-operation and assistance.

__Resolution II__ describes concrete measures for improving the efficiency of the Council of Europe's response to serious mass violations of human rights, and firmly condemns any use of torture, systematic rape and extra-judicial executions. Furthermore, it urges member states to abolish the death penalty in both wartime and peacetime.

Recurrent cases of discrimination against migrants, refugees, stateless persons and asylum-seekers on the grounds of their national, ethnic or cultural origin, their language or their religion, whether or not they belong to a national minority, are mentioned, as well as the situation of Roma/Gypsies.

The resolution also stresses the adoption by the Committee of Ministers of Protocol No. 12 to the Convention, which introduces a general prohibition of discrimination, and invites the States Parties to the Convention to consider signing this protocol.

Resolution II

Respect for human rights, a key factor for democratic stability and cohesion in Europe: current issues

1. The European Ministerial Conference on Human Rights ("the Conference"), meeting in Rome on the 50th Anniversary of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"), opened for signature in Rome on 4 November 1950;
2. Recalling that in the Vienna Declaration adopted at the First Summit of the Council of Europe (8-9 October 1993), the Heads of State and Government of member states committed themselves to rendering the Council of Europe fully capable of contributing to democratic security as well as meeting the challenges of society in the 21st century, giving expression in the legal field to the values that define our European identity, and to fostering an improvement in the quality of life;
3. Also recalling that the Final Declaration of the Second Summit of Heads of State and Government of the Council of Europe (Strasbourg, 10-11 October 1997) underlined the essential standard-setting role of the Council of Europe in the field of human rights and expressed full support for an intensification of the Council of Europe's contribution to cohesion, stability and security in Europe;
4. Reaffirming the conviction expressed in the Final Declaration that the promotion of human rights and the strengthening of pluralist democracy both contribute to stability in Europe;

A. Improving the effectiveness of the Council of Europe's response to serious and massive violations of human rights

5. Preoccupied by situations of conflict or crisis in Europe, which pose fundamental questions of respect for human rights;
6. Recognising that terrorism in all its forms and manifestations poses a serious threat for human rights, democracy and the rule of law;
7. Noting that, notwithstanding that the Council of Europe's prime vocation is to defend human rights and that its composition is pan-European, the potential of this Organisation is not sufficiently exploited to respond to serious and massive human rights violations or to prevent such violations,
8. **Firmly condemns** all situations of serious and massive violations of human rights, including any use of torture, the systematic practice of rape and extra-judicial executions;
9. **Requests** the appropriate bodies of the Council of Europe to assume fully their respective responsibilities, in accordance with their mandates, so that they can rapidly and effectively respond to, or prevent, such situations:
   i. the Committee of Ministers as well as the Parliamentary Assembly, each having their own political role to play whenever such violations occur in one of the member states;
   ii. the Secretary General, who can, in particular, ask any High Contracting Party to furnish explanations of the manner in which its internal law ensures the effective implementation of any of the provisions of the Convention;
   iii. the Commissioner for Human Rights who has a preventive role which he can exercise with regard to situations of crisis or conflict which could lead to serious and massive human rights violations;
   iv. the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and those responsible for other Council of Europe bodies and mechanisms, including those monitoring member States' compliance with their commitments (the monitoring exercises), which can play a role in preventing such situations, within their respective areas of responsibility and according to their own specific means of action;
10. **Encourages** the Council of Europe to develop a wider range of responses to cases of failure of member states to abide by Council of Europe human rights standards;
11. **Considers** that it would be desirable for the Committee of Ministers to initiate consideration of the protection of human rights during armed conflicts as well as during internal disturbances and tensions, including as a result of terrorist acts, with a view to assessing the present legal situation, identifying possible gaps in the legal protection of the individual and to making proposals to fill such gaps.

B. Abolition of the death penalty, in time of war as in time of peace

12. Noting that a few member states have not yet abolished the death penalty nor ratified Protocol No. 6 to the Convention,

13. **Urgently requests** that the member states:
   i. ratify as soon as possible, if they have not yet done so, Protocol No. 6, and in the meantime, respect strictly the moratoria on executions;
   ii. refrain from extraditing or expelling individuals to countries where they run a real risk of being sentenced to death or being executed;
14. **Invites**:
   i. the member states which still have the death penalty in respect of acts committed in time of war or of imminent threat of war to consider its abolition;
   ii. the Committee of Ministers to consider the feasibility of a new additional protocol to the Convention which would exclude the possibility of maintaining the death penalty in respect of acts committed in time of war or of imminent threat of war.

C. Principles of equality and non-discrimination

15. Expressing its concern about the various threats to the principles of equality and non-discrimination, such as racism, xenophobia, anti-Semitism and intolerance;
16. Recalling the Declaration and Plan of Action on combating racism, xenophobia, anti-Semitism and intolerance adopted at the 1st Council of Europe Summit (Vienna, 8-9 October 1993) and the Final Declaration of the 2nd Council of Europe Summit (Strasbourg, 10-11 October 1997), which stress the need to combat racism, xenophobia, anti-Semitism and intolerance;
17. Endorsing the general conclusions and the Political Declaration of the European Conference "All different, all equal: from theory to practice" held in Strasbourg, from 11-13 October 2000 (European Contribution to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance);
18. Deploring, in particular, the recurrent instances of discrimination against migrants, refugees, stateless persons and asylum-seekers on grounds of their national, ethnic or cultural origin, their language, or religion, whether they belong to national minorities or not, and referring notably to the situation of Roma/Gypsies;
19. Expressing also its concern about the continuing inequalities affecting women and welcoming the work carried out by the Council of Europe in order to overcome them;
20. Endorsing also Recommendation No. R (2000) 11 of the Committee of Ministers to member states on action against trafficking in human beings for the purpose of sexual exploitation,
21. **Encourages** member states to reaffirm their commitment to promoting the principle of equal dignity for all as the very foundation of human rights;
22. **Stresses** the adoption by the Committee of Ministers of Protocol No. 12 to the Convention, which introduces a general prohibition of discrimination;
23. **Invites** the States Parties to the Convention to consider signing Protocol No. 12 and beginning the ratification process with a view to its early entry into force;
24. **Encourages** member states to consider further legal, policy and other measures at the national level prohibiting incitement to hatred and discrimination;
25. **Invites** the member states that have not yet done so to consider or reconsider the possibility of becoming a Party to the Framework Convention for the Protection of National Minorities (1995) and the States Parties to co-operate fully with the monitoring mechanism set up by this Convention;
26. **Invites** member States to reinforce their co-operation in the framework of the Council of Europe concerning equality of women and men, with a view to:
   i. promoting increased participation of women in particular in decision-making and the balanced representation of women and men in all fields of society;
   ii. combating all forms of violence against women and particularly trafficking in women and young girls;
   iii. envisaging new initiatives in order to eliminate inequalities between women and men;
27. **Invites** member states to implement the recommendations drawn up by the European Commission against Racism and Intolerance (ECRI).

D. Human rights and technological developments

28. Aware of the benefits of technological developments, but also of the possible abuses to which they could give rise, and which could threaten human dignity;
29. Welcoming the Convention for the protection of human rights and dignity of the human being with regard to the application of biology and medicine (1997) and its additional protocol on the prohibition of cloning of human beings (1998),
30. **Encourages** member states that have not yet signed and ratified the above-mentioned Con-

vention and protocol, to consider doing so;

31. **Supports** the activities of the Council of Europe with a view to providing for further protection in fields such as organ transplantation, biomedical research and human genetics and the protection of the human embryo and foetus;
32. **Encourages** the Council of Europe to:
    i. study appropriate measures in order that other technological developments, such as in the fields of the environment and applied biotechnologies concerning products destined for human consumption, respect the quality of life and the requirements of human rights;
    ii. protect the confidentiality of private communications including those using the Internet;
    iii. pursue its work against uses of the Internet which threaten human rights, such as activities concerning child pornography, trafficking of women, racism and extremist movements.

E. Human rights and civil society

33. Reaffirming the importance of human rights education and awareness-raising and stressing that these are effective ways of preventing negative attitudes towards others and of promoting a culture of peace, tolerance and solidarity in society;
34. Recalling that such education can raise awareness of the responsibility of each individual to respect the human rights and dignity of others;
35. Stressing the importance of human rights education for the legal profession;
36. Recognising the important contribution that Ombudsmen, national human rights institutions and NGOs make to the promotion and protection of human rights and welcoming their co-operation with the Council of Europe;
37. Recalling that ensuring transparency within public administrations and guaranteeing the right of access of the public to official information are requirements of a pluralistic democratic society;
38. Recalling the fundamental importance of freedom of expression and information, as guaranteed by Article 10 of the Convention and the relevant case law of the Court, in regard to the objectives of pluralistic democracy and the protection of human rights, which are at the core of the Council of Europe action, and noting that this freedom and the freedom of the media are often among the first to be affected when massive human rights violations are committed,
39. **Welcomes** the contribution of NGOs to the preparation of this Conference and the important role they play in civil society, in particular through raising awareness of human rights issues;
40. **Invites** member states to take all appropriate measures with a view to developing and promoting education and awareness of human rights in all sectors of society, in particular with regard to the legal profession;
41. **Requests** the Committee of Ministers to examine possibilities for creating a focal point within the Secretariat of the Council of Europe in order to consolidate the co-operation with Ombudsmen and national human rights institutions of the member states;
42. **Encourages** member states which have not yet done so to consider the possibility of establishing Ombudsmen and national human rights institutions of the member States in accordance with the relevant Recommendations of the Committee of Ministers and to ensure that there are institutions which are able to intervene in the fight against racism and intolerance ;
43. **Welcomes** the ongoing drafting work within the Council of Europe concerning principles which could constitute a minimum basis for access to official information, taking into account the new environment created by information and communication technology;
44. **Stresses** the necessity of guaranteeing, also in situations of conflict and tension, the freedom and independence of the media, so that they are able to inform the public without being exposed to threats, attacks or arbitrary sanctions;
45. **Underlines** the importance of the contribution of the media to the achievement of the objectives set out by this Conference, in particular through awareness-raising of the public to human rights questions.

Luzius Wildhaber

President of the European Court of Human Rights, speaking at the ceremony to commemorate the fiftieth anniversary of the Convention

Mr Chairman, Mr President of the Parliamentary Assembly, Mr Secretary General, Excellencies, colleagues and friends, ladies and gentlemen,

May I first of all congratulate and thank the Italian Government for their hospitality and for having organised this ceremony, together with the Council of Europe. I should also like to express the satisfaction of the Court at the tenor of the resolution just adopted by the Ministers with its recognition of the difficulties facing the Court and of the need for urgent measures. We look forward to further dialogue with the Ministers' Deputies in the Liaison Committee and such expert groups as may and should be appointed to examine the various solutions, which must cater for the short, medium and long term. We are gratified by the consistent and wholehearted support shown by the Government delegations in their contributions to the Conference.

> Fifty years ago, few of those involved in the signing ceremony in the Palazzo Barberini can have foreseen the full impact of their actions

Our first thoughts today are for the extraordinary achievement represented by the instrument whose fiftieth anniversary we are celebrating. Fifty years ago, few of those involved in the signing ceremony in the Palazzo Barberini can have foreseen the full impact of their actions. The breakthrough in international law and indeed in the conduct of human affairs that was concretised that day was born of the vision of a small group of farsighted, idealistic lawyers and politicians, led by Pierre-Henri Teitgen and David Maxwell-Fyfe, the rapporteurs in the Parliamentary Assembly. Following up on the work of Eleanor Roosevelt and René Cassin on the Universal Declaration and determined to prevent the recurrence of the devastation of war and the attendant horrendous crimes, they argued that the best way to achieve that end was to guarantee respect for democracy and the rule of law at national level. They realised that only by the collective enforcement of fundamental rights, requiring states to surrender what was at the time an unprecedented degree of sovereignty, was it possible to secure the common minimum standards that form the basis of democratic society. For the first time individuals could challenge the actions of governments before an international mechanism under a procedure leading to a binding judicial decision. The fact that we take this for granted today is a measure of the progress that has been accomplished since the beginning of the twentieth century.

International accountability

Impervious and imperious sovereignty has yielded to a culture of international accountability of states and indeed individuals. From a world-wide perspective this process is far from complete. Other regional human rights protection systems and I take the opportunity to greet the representatives of our sister Court, the Inter-American Court of Human Rights, not having had the advantage of a homogeneous core of democratic states at the outset, are at an earlier stage of development. The United Nations procedure is optional and lacks teeth. The Statute of the International Criminal Court has not yet entered into force. The matrix of this movement is the Universal Declaration of Human Rights. But its fullest and most successful realisation is our Convention, the European Convention on Human Rights.

Two years ago the Convention system underwent a major reform. The original institutions, the European Court and the Commission of Human Rights, were replaced by a single Court functioning on a full-time basis. The optional elements of the earlier system, the right to individual petition and the acceptance of the Court's jurisdiction were eliminated, as was the Committee of Ministers' adjudicative role. The Convention process, directly accessible to individuals, had become fully judicial in character in accordance with the first intentions of the drafters. In our celebration today, we must not forget the immense contribution to the Convention's success of the two initial bodies, the Commission from 1954 (and here may I salute the presence of the former President Stefan Trechsel) and the Court from 1959. Slowly but surely they built up the confidence of the governments, the legal professions and the citizens.

Pioneering case-law

Through their pioneering case-law the Convention was given life. Their purposive, autonomous, at times creative interpretation of the Convention enhanced the rights protected to ensure that they had practical effect. Just to take one example, the right of access to a court, a right that lies at the heart of the Convention and a key element of the rule of law, was not expressly mentioned in the due process provision, Article 6 para. 1. The Court's observation was of beautiful simplicity. "The fair, public and expeditious characteristics of judicial proceedings are of no value at all if there are no judicial proceedings" (Golder 1975, para. 35). To this the Court later added that the right of access "would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party" (Hornsby, 1997, para. 40).

The Court and Commission established the principle that the Convention is to be interpreted as a living instrument, to be construed in the light of present day conditions. The Convention terms have consequently not remained frozen in the meaning that might have been attributed to them in 1950. The Convention retains its direct relevance fifty years on.

A hearing in the European Court of Human Rights

Accelerating conveyor belt

I therefore pay tribute to the work of the present Court's predecessors in both original institutions. They left us an extensive and rich case-law, woven into and inextricable from the very terms of the Convention. I am pleased to be able to report that those high standards have been maintained. There has been no weakening of the protection offered, on the contrary in some important areas the new Court has taken positive steps to clarify and strengthen the Convention's reach. But we also inherited a considerable case-load and a situation in that respect which was rapidly deteriorating, a 40% increase in 1999, over 20% this year. We had to learn to run before we could walk and, I say with some pride in the achievement of my colleagues, we did learn to run, but, rather like the Chaplin film *Modern Times*, we are running on an accelerating conveyor belt and we have to run faster all the time just to keep on the same spot.

So we must also use this anniversary to look forward. In doing so we must keep in mind the ambition and breadth of the original vision, the vision of a Europe-wide common system of protection of human rights. This vision has, I believe, been reinforced by the recent adoption of the draft European Union Charter of Fundament Rights which has confirmed the place of the Convention as a permanent and important feature of the European constitutional landscape. The Charter discussions have established a consensus that in Europe there can be only one set of common minimum standards whether within or outside the Union. We must be vigilant in ensuring that that consensus is preserved. I reiterate

my call that the Communities should take this process to its logical conclusion by themselves acceding to the Convention, under modalities and procedures to be agreed.

Ladies and gentlemen, the authority of an international court such the Strasbourg Court rests essentially on two elements: its independence and its effectiveness. It is therefore by protecting these two aspects that we preserve the future of the system.

> Contracting States must be encouraged to implement the Court's case-law in general and to make it accessible to their national courts

As to independence, apart from obviously unresolved questions of the administrative status of the Court within the Council of Europe, this issue has up to now not given too much cause for concern. We should, however, remain vigilant, and this is particularly important in relation to procedures for the election of judges. Put crudely, sitting judges must not be under the impression that their reselection as a candidate will depend on their voting record. I am confident that the informal consultation process carried out by the Committee of Ministers and the controls exercised by the Parliamentary Assembly will ensure that the selection of candidates, *a fortiori* where the candidate is a sitting judge, is determined solely on the basis of experience, particularly judicial experience and ability.

On effectiveness, a whole range of measures are being, and will need to be, contemplated. Faced with a steadily rising case-load, the Court will continue to refine its practices and procedures within the limits of the Convention terms. This needs to be accompanied by efforts on the part of the Contracting States to strengthen human rights protection at national level and particularly to set in place the appropriate procedures within their domestic systems. They must continue to execute judgments in good faith and must be encouraged to implement the Court's case-law in general and to make it accessible to their national courts.

In the immediate future, however, the Court will need more resources, essentially with a view to recruiting case-processing lawyers and maintaining an effective level of information technology. In plain language, if the Court is to have a realistic chance of keeping up with case-load volumes, its budget will have to be increased by about 3.8 million euros or around 3 million dollars. That is not an enormous amount, although in the context of the current budgetary climate within the Council of Europe it would require a derogation from the zero growth orthodoxy. Let me be entirely clear about this. The Court will make every effort to increase its efficiency, in so far as that does not impinge on the quality of its main judicial work. The Court is ready to explore every avenue that does not affect the substance of the Convention guarantee, but a pan-European system of human rights protection which has raised legitimate expectations among the 800 million citizens within its jurisdiction requires adequate funds. The case-load will continue to rise, the opening for signature of Protocol No. 12, which we welcome, will also increase the Court's workload. If you want this system to work, you, the Governments, are going to have to draw the inevitable conclusions. We are reassured to see that yesterday's conference called for urgent measures.

Process of reflection

Finally, reform in the longer term is, in my personal view, an option, if not a necessity. The Court has not come to Rome with concrete proposals and it will, in any case, seek to achieve the maximum within the existing terms. But the process of reflection must start now. I can say on behalf of the Court that we do not support the idea of regional human rights tribunals. A system of requests for preliminary rulings submitted by national courts would be conceivable only if it was accompanied by a drastic reduction in the number of individual complaints.

The European Convention on Human Rights, signed in Rome in 1950

Yet the Court considers that individual applications must remain the backbone of our system. Personally speaking I have no doubt that the Court will need the introduction of an element of discretion so that it can give judgments without undue delay and can concentrate on priority cases and issues. Again let me urge that the Court be consulted and involved at every stage of the reform process.

> There is no going back to days of absolute impunity for states that abuse human rights

It cannot be said that fifty years ago the Convention immediately ushered in a new era. But it was a turning point; a seed was sown and it has grown, flourished and spread, even beyond the frontiers of Europe. There is no going back to days of absolute impunity for states that abuse human rights. Let us make this anniversary celebration an occasion for reaffirming our determination to progress further.

Beautiful words

Mr Secretary General, representatives of the governments,

We have heard some beautiful words over the last two days; beautiful words are of course some comfort, and we are indeed grateful for them, but they must be translated into concrete action after this Conference if you want our system to continue to work. In this connection I would remind you that the final budgetary discussions within the Council of Europe are imminent: you have the opportunity there and then to give us the means we need to carry out our task properly. Do not let it go by. We also need action on reform, so do not delay in appointing a small group of experts, to work in close co-operation with the Court, to come up with realistic proposals which will guarantee effectiveness without depriving the Convention of its fundamental character as a pan-European instrument for the protection of the rights which must and will underpin all our societies.

"There will not be peace on this planet as long as human rights are violated in any part of the world"

René Cassin, 1968

The birth of a new protocol

On the occasion of the Rome conference, Protocol No. 12 to the European Convention on Human Rights was opened for signature by the member states. The creation of a new protocol to the Convention is not an overnight affair. Here, in outline, are the steps in the development of Protocol No. 12.

States that signed Protocol No. 12 on 4 November 2000

Austria, Belgium, Cyprus, Czech Republic, Estonia, Finland, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Luxembourg, Moldova, the Netherlands, Portugal, Romania, Russia, San Marino, Slovakia, "the former Yugoslav Republic of Macedonia" and Ukraine

October 1993

Meeting at the Vienna Summit, the heads of state and government of Council of Europe member states adopt the Declaration and Plan of Action which reflect concern about manifestations of racism, xenophobia, anti-Semitism and intolerance. Among the measures agreed on are the creation of a new European expert body: the European Commission against Racism and Intolerance (ECRI).

September 1994

The Committee of Ministers refers to the CDDH for consideration a proposal of the Steering Committee for Equality between Women and Men (CDEG) to include in the Convention system a substantive right of women and men to equality.

September 1995

ECRI proposes to the Committee of Ministers the creation of an instrument prohibiting discrimination on grounds of race and related grounds to supplement the prohibition on discrimination contained in Article 14 of the European Convention on Human Rights.

April 1996

The Committee of Ministers instructs the Steering Committee for Human Rights (CDDH) to examine the advisability and feasibility of a legal instrument against racism and intolerance.

October 1996

Acting on the CDEG proposal, the CDDH recommends to the Committee of Ministers that the possibility of standard-setting solutions to the question of equality between women and men be explored further. However, it is of the opinion that it should not take the form of a specific draft protocol to the ECHR, as this would be a sector-based approach out of keeping with the principle of universal human rights. This is endorsed by the Committee of Ministers in December of the same year.

October 1997

The CDDH votes in favour of elaborating an additional protocol to the Convention broadening, in a general fashion, the field of application of Article 14.

March 1998

The proposal is accepted by the Committee of Ministers, which approves the drafting of the new protocol.

Mid-1999

The CDDH presents a draft text to the Committee of Ministers and asks for its transmission to the European Court of Human Rights and the Parliamentary Assembly for opinion.

September 1999

Draft Protocol No. 12 to the ECHR is published as a Parliamentary Assembly document (Doc. 8490).

December 1999

The opinion of the European Court of Human Rights recognises that certain forms of discrimination cannot be brought within the ambit of Article 14. It also observes that the draft protocol provides a "clear legal basis for examining discrimination issues not covered by Article 14". Whilst drawing attention to the fact that its entry into force would entail a substantial increase in the Court's case-load, the Court welcomes the draft protocol as "a further substantial step in securing the collective enforcement of fundamental rights through the European Convention on Human Rights".

January 2000

In its Opinion No. 216, the Parliamentary Assembly states that the draft protocol "does not fully meet its expectations" because it does not contain the principle of equality of men and women before the law and because "sexual orientation" has not been added to the list of discrimination grounds. The Assembly proposes amendments.

March 2000

After examining these opinions, the CDDH finalises the draft protocol. No changes are made in the main provision.

June 2000

The Committee of Ministers adopts the text as Protocol No. 12 to the European Convention on Human Rights.

November 2000

Protocol No. 12 is opened for signature. Twenty-five member states sign.

The full text of Protocol No. 12 was published in *Human rights information bulletin* No. 49. It is also available on the Internet from the Council of Europe's Treaty Office (http://conventions.coe.int/). It will enter into force when ten states have ratified it.

Fifty years ago …

Human rights are inalienable: they tran scend every attempt of men and women either to violate them or to affirm them…

Why the need for a convention, an international law? Centuries back, Montesquieu gave the answer: "A thing is not just simply because the law says it is; it should form part of the law because it is just."

Our present act is both just and necessary. Necessary, because in an era as troubled as ours human rights have been both violated and ignored. Our act is an act of faith in human destiny, an act in the purest sense, because it signifies our agreement, backed by the best of our abilities, that human rights should be henceforth better assured and more effectively protected than in the past.

Belgium

The Convention which comes into being today contains all elements of agreement we have reached at this moment. I sincerely hope that at a later stage we shall be in a position to add to the human rights to which we subscribe today some of the proposals of the Consultative Assembly, in particular the right to property and that of education.

Rome, the name of the Eternal City in this document will reflect the civilisation and eternity which are at the basis of our aims.

Denmark

This Convention does not quite have the scope nor the precision that many of us had hoped for …

Nevertheless, it forms the foundations on which we wish to construct the defence of human beings against all forms of tyranny and totalitarianism.

France

The basis of democratic states is the law. The essence of law is freedom, since it is only freedom that defines the conditions that allow people to live together as free individuals.

For this reason, an agreement on what comprises human rights and fundamental freedoms may even be the basis for a European constitution.

Federal Republic of Germany

Greece, the soldier of liberty, can only express its complete agreement with the principles which inspire the Convention.

Greece

We were convinced that these fundamental rights belonged to every human being… During the past two decades the forces of tyranny have gained enormously in force. Iceland regards it as a privilege to be allowed to participate in this first international Convention on Human Rights … the first step for building a bastion from where we hope to be able to set out on a conquest for these rights…

Iceland

The present struggle is one which is largely being fought in the minds and conscience of mankind. In this struggle I have always felt that we lacked a clearly defined charter, which set unambiguously the rights we as democrats guarantee to our people.

I am disappointed that the recommendations of the Assembly have not yet been accepted. However, I hope that more and faster progress may be made in the near future.

Ireland

The signature of the Convention is especially important, I believe, for small countries like mine, whose well-being depends on a clearly defined legal system – whether it be the laws protecting the state itself or those protecting its citizens.

Luxembourg

As an Italian, I am delighted that we are signing this Convention here among us. Inspired as it is by the human individual, it brings honour to the people who brought it about.

I am grateful to the allied and friendly governments for having chosen for its signature our city of Rome, which, as the home of law, is their home also.

Carlo Sforza,
Chairman of the Committee of Ministers of the Council of Europe

… the members of the Committee of Ministers signed the European Convention on Human Rights. Digging into the archives, we have made a selection from the declarations made at the time by each state.

Today we show that our common belief in freedom, the rule of law and democratic institutions is a living reality which is the basis of our work in the Council of Europe.

The Netherlands

We all possess, in the constitutions or basic laws of our countries, rules governing the essential protection of our shared civilisation… The Convention that we are signing today raises the protection of the basic rights of the individual to the European level.

Norway

For us, the Convention on Human Rights takes on a particular significance in the aftermath of the collapse of a regime built on the denial of these rights.

Saarland

After the convulsion that has shaken the whole of Europe, the great tradition of freedom for mankind will find a new expression and a new confirmation in this document signed in Rome.

Sweden

The document we have just signed is perhaps yet unfinished and imperfect but I firmly believe that we will succeed in completing it within the very near future.

I should like to express the hope that the principles we have stated here will be applied and respected not only by the members of the Council of Europe but also by the whole of humanity.

Turkey

Freedom and respect for the individual are note mere words, but are powerful and dynamic forces, binding men throughout the free world and leading us to the goal, a united, free world capabale of sustaining itself in peace and strength against whatever threats, from whatever source, may assail it.

United Kingdom

The Council of Europe has taken a definite step to carry out its aims by drawing up "the rules of the Club". It has laid down the minimum standards of human dignity and freedom compatible with membership. In some countries which have been fortunate enough not to lose individual human rights the matter may seem of small importance, but as the majority of our members have seen literally all human rights disappear in their own lands during the last ten years, the importance for them is obvious.

It will be observed that we have chosen simple rights. Indeed, it is a bitter commentary on the twentieth century that almost all of them would have been taken for granted in almost every country in 1900.

Anyone who has had to study the onset of totalitarians would agree that there is a tide in the affairs of states which, taken at the flood, sweeps on its people and leaves them high and dry on the rocks of tyranny. Nevertheless, there is always a moment when the guiding lights of democracy and reason, though burning low, are not extinguished. The problem is how these lights can be tended in time. We believe that an impartial and objective examination by an international body of the alleged infringements of a generally accepted code of individual freedoms would illuminate the dangers for all good democrats to see. We believe, further, that when the truth of the situation is seen, a stand against the encroachments of tyranny would be made.

Some may say that it is of doubtful value that the democratic nations should reinforce individual liberty among themselves and leave the totalitarian states untouched. We do not accept this pessimistic view. We consider that our light will be a beacon to those at the moment in totalitarian darkness and will give them a hope of return to freedom. Further, the Convention need not only be a test of membership, if it is adopted, but also a passport of return to our midst.

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