Freie Universität Berlin
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Herwig Roggemann (Hrsg.)

Europski sud za ljudska prava

Der Europäische Gerichtshof für Menschenrechte

Mit einer Einführung von Nina Vajić, Richterin am EuGHMR

Mit Beiträgen von:
Josip Škarpa
Axel Bormann
Stefan Hanisch
Marko Ivkošić
Petar Pejković
Marina Gruberac
Dubravka Kežić
Herwig Roggemann

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INHALTSÜBERSICHT

VORWORT 5
Herwig Roggemann

EINFÜHRUNG
DIE TÄTIGKEIT DES EUROPÄISCHEN GERICHTSHOFS FÜR MENSCHENRECHTE –
UNTER BERÜCKSICHTIGUNG DER DIE REPUBLIK KROATIEN BETREFFENDEN URTEILE 7
Nina Vajić

DER EUROPÄISCHE GERICHTSHOF FÜR MENSCHENRECHTE (EuGHMR) –
ALLGEMEINE INFORMATIONEN 15
aus dem Deutschen von Josip Škarpa

DIE KONVENTION ZUM SCHUTZ DER MENSCHENRECHTE UND GRUNDFREIHEITEN 20

DIE VERFAHRENSORDNUNG DES EuGHMR - RULES OF THE COURT 67

FORMULAR ZUR ANTRAGSTELLUNG BEIM EuGHMR 100

HINWEISE ZUM AUSFÜLLEN DES ANTRAGS GEMÄSS ARTIKEL 34
DER KONVENTION ZUM SCHUTZ DER MENSCHENRECHTE UND GRUNDFREIHEITEN 106

HINWEISE ZUR ANTRAGSSTELLUNG BEIM EuGHMR 109

ÜBERSICHT ÜBER DAS VERFAHREN VOR DEM EUROPÄISCHEN
GERICHTSHOF FÜR MENSCHENRECHTE IN STRASSBURG 112
Marko Ivkošić

WICHTIGE ENTSCHEIDUNGEN DES EuGHMR ZUR REPUBLIK KROATIEN 114

- Rajak v. Croatia 114
  Petar Pejković
- Kutić v. Croatia 117
  Marina Gruberac
- Mikulić v. Croatia 120
  Dubravka Kežić

SLIVENKO UND ANDERE V. LETTLAND, 14. NOVEMBER 2001
EIN TAG AM EUROPÄISCHEN GERICHTSHOF FÜR MENSCHENRECHTE, STRAßBURG 123
Axel Bormann und Stefan Hanisch
aus dem Deutschen zusammengefaßt von Josip Škarpa

EUROPÄISCHE GRENZEN FÜR DEN DEUTSCHEN STAATSSCHUTZ? 130
Zum Radikalenerlaß-Urteil des EuGHMR (Fall Vogt) vom 26.9.1995
Herwig Roggemann

LITERATURHINWEISE 143

SADRŽAJ

PREDGOVOR 6
Herwig Roggemann

UVOD
DJELOVANJE EUROPSKOG SUDA ZA LJUDSKA PRAVA
S OSVRTOM NA PRESUDE KOJE SE ODNOSE NA REPUBLIKU HRVATSKU 7
Nina Vajić

EUROPSKI SUD ZA LJUDSKA PRAVA – OPĆE INFORMACIJE 15
(s njemačkog preveo: Josip Škarpa)

KONVENCIJA ZA ZAŠTITU LJUDSKIH PRAVA I TEMELJNIH SLOBODA 20

PRAVILA POSTUPKA EUROPSKOG SUDA ZA LJUDSKA PRAVA 67

FORMULAR ZA PODNOŠENJE ZAHTJEVA EUROPSKOM SUDU ZA LJUDSKA PRAVA 100

UPUTA ZA ISPUNJAVANJE ZAHTJEVA PREMA ČLANKU 34.
KONVENCIJE ZA ZAŠTITU LJUDSKIH PRAVA I TEMELJNIH SLOBODA 106

UPUTA ZA PODNOŠENJE ZAHTJEVA EUROPSKOM SUDU ZA LJUDSKA PRAVA 109

PREGLED POSTUPKA PRED EUROPSKIM SUDOM ZA LJUDSKA PRAVA U STRASBOURGU 112
Marko Ivkošić

VAŽNE ODLUKE EUROPSKOG SUDA ZA LJUDSKA PRAVA
KOJE SE TIČU REPUBLIKE HRVATSKE 114

- Rajak v. Croatia 114
  Petar Pejković
- Kutić v. Croatia 117
  Marina Gruberac
- Mikulić v. Croatia 120
  Dubravka Kežić

SLIVENKO I DRUGI PROTIV LETONIJE, 14. STUDENI 2001.
JEDAN DAN NA EUROPSKOM SUDU ZA LJUDSKA PRAVA U STRASBOURGU 123
Axel Bormann i Stefan Hanisch
S njemačkog preveo i sažeo Josip Škarpa

EUROPÄISCHE GRENZEN FÜR DEN DEUTSCHEN STAATSSCHUTZ?
O PRESUDI EUROPSKOG SUDA ZA LJUDSKA PRAVA
KOJA SE TIČE TZV. “RADIKALNOG UKAZA” (SLUČAJ VOGT) OD 26.9.1995. 130
Herwig Roggemann

LITERATURA 143

VORWORT

Die Rechtsentwicklung im Europa der Europäischen Union und darüber hinaus des Europarats und die weitere Vorbereitung der voraussichtlich noch in diesem Jahrzehnt zu erwartenden Mitgliedschaft Kroatiens in der EU werden weiterhin wichtige Themen für die kroatische Rechtswissenschaft und Praxis und insbesondere für die junge Juristengeneration bleiben.

Zu den wichtigen und folgenreichsten Rechtsgrundlagen Europas gehört die Konvention zum Schutze der Menschenrechte und Grundfreiheiten vom 1950 in der Auslegung, die ihr der Europäische Gerichtshof für Menschenrechte seither gegeben hat. Der EuGHMR, der 1959 gegründet wurde und seit 1998 als ständiges Gericht allen Bürgern der Konventionsstaaten als letzte Instanz nach Erschöpfung der nationalen Rechtswege offensteht, hat entscheidend zur Entwicklung und Ausprägung demokratischer und rechtsstaatlicher Grundlagen und Grenzen des Rechts in Europa beigetragen. Die Charta der Grundrechte in der vom Konvent entworfenen neuen Europäischen Verfassung wäre ohne die jahrzehntenlange Rechtsprechung des EuGHMR nicht möglich gewesen. Und zahlreiche Lösungen, die dieses Gericht in Konflikten zwischen den Bürgern und den Gerichten und anderen Organen ihrer Staaten gefunden hat, waren richtungweisend für die weitere nationale Gesetzgebung und Rechtsprechung und werden dies wohl auch in Zukunft sein.

Für die Staaten Mittel-, Ost- und Südosteuropas und insbesondere auch für die Republik Kroatien, ihre Rechtswissenschaftler und Rechtspraktiker, ist die Kenntnis der rechtsstaatlichen Standards und Verfahrensgrundsätze dieses Gerichts bedeutsam auf ihren weiteren Weg in den Europäischen Rechtsraum.

Im Rahmen des XV. Colloquiums des Zentrums für deutsches, kroatisches, europäisches Recht und Rechtsvergleichung an der Juristischen Fakultät Split hat Frau Prof. Dr. Nina Vajić, Richterin am Europäischen Gerichtshof für Menschenrechte in Straßburg, über Zuständigkeit, Verfahren sowie einzelne Kroatien betreffende Entscheidungen referiert und mit Teilnehmern des Seminars Einführung in das deutsche Rechts und die Rechtsvergleichung diskutiert.

Der Herausgeber dankt den Teilnehmern des Seminars, den Verfasserinnen und Verfassern sowie Übersetzern der Beiträge, den Herausgebern der Tribina Zagreb für die freundliche Erlaubnis zum Abdruck sowie Herrn Dipl. iur. Josip Škarpa und Frau Dipl. iur. Kornelija Valjan für die umsichtige Redaktion.

Berlin / Split, im September 2003

Herwig Roggemann

PREDGOVOR

Razvoj prava u Europi u smislu Europske unije, ali i povrh toga u Vijeću Europe i daljnje pripreme za članstvo u Europskoj uniji, koje se može očekivati još u ovom desetljeću, i nadalje će ostati važne teme za hrvatsku pravnu znanost i praksu, te osobito za mlade generacije pravnika.

Među važne i po rezultatima najbogatije pravne temelje Europe spada Konvencija za zaštitu ljudskih prava i temeljnih sloboda iz 1950. godine i to u tumačenju kakvo joj od njenog postanka dao Europski sud za ljudska prava. Europski sud za ljudska prava koji je osnovan 1959. godine, a od 1998. godine kao stalni sud stoji na raspolaganju svim građanima država potpisnica Konvencije i to kao posljednja instanca nakon iscrpljenja nacionalnih pravnih puteva na odlučujuci je način pridonjeo razvoju i oblikovanju demokratskih i državno-pravnih temelja i granica prava u Europi. Bez dugogodišnje pravne prakse Europskog suda za ljudska prava ne bi bila ostvariva ni Povelja temeljnih prava u novom Europskom ustavu za koji je nacrt izradio konvent. Brojna rješenja koja je ovaj sud iznašao u sporovima izmedu građana i sudova, te drugih organa njihovih država imala su usmjeravajući utjecaj na daljnje djelovanje nacionalnog zakonodavstva i sudova, a takav utjecaj će vjerojatno imati i u budućnosti.

Znanje o državno-pravnim i postupovnim načelima ovog suda vrlo je važno za države srednje-, istočne i jugoistočne Europe, a posebno i za za Republiku Hrvatsku, njezine pravne znanstvenike i praktičare na njihovom daljnjem putu u europski pravni prostor.

Na Pravnom fakultetu u Splitu, a u okviru XV. Kolokvija Centra za njemačko, hrvatsko, europsko i komparativno pravo gospođa prof. dr. Nina Vajić, sutkinja na Europskom sudu za ljudska prava u Strasbourgu izlagala je o nadležnosti suda, postupku kao i o pojedinačnim odlukama koje se tiču Hrvatske, te je nakon izlaganja uslijedila i diskusija sa sudionicima seminara “Uvod u njemačko i komparativno pravo”.

Izdavač zahvaljuje sudionicima seminara, autoricama i autorima kao i prevoditeljima priloga, te izdavačima Tribine iz Zagreba na ljubaznom dopuštenju za tisak jednog od priloga, a gospodinu dipl. iur. Josipu Škarpi i gospođi dipl. iur. Korneliji Valjan na pomnoj redakciji.

Berlin / Split, rujan 2003. g.
Herwig Roggemann

UVOD

DJELOVANJE EUROPSKOG SUDA ZA LJUDSKA PRAVA S OSVRTOM NA PRESUDE PROTIV REPUBLIKE HRVATSKE

KLUB PRAVNIKA

TRIBINA 17.06.2002.

Nina Vajić

Moje se izlaganje sastoji iz dva dijela. U prvom ću dijelu govoriti o organizaciji Europskog suda za ljudska prava i postupku; u drugom ću dijelu reći nesto o važnosti sudske prakse i njenoj evoluciji i to vezano uz presude koje su do sada donesene protiv Republike Hrvatske. Sigurno će ostati dosta stvari koje, radi vremenskog ograničenja neću spomenuti, neke možda koje ću i zaboraviti, jer tu kraj mene sjedi »kronometar» koji mi je već rekao da ne smijem predugo govoriti, jer je ljudima vruće, a i da inače to nije običaj! Sve ono sto vas zanima, a što ne spomenem ili možda samo dotaknem u svom izlaganju – nadam se da ćete me pitati i ja ću vam vrlo rado odgovoriti.

Dopustite mi na početku dvije-tri riječi o postanku Konvencije – na to se danas možda pomalo zaboravlja. Europska konvencija za ljudska prava je stari instrument, potpisana je 4. studenog 1950. u Rimu, a nastala je kao reakcija na masovna kršenja ljudskih prava do kojih je doslo kroz prethodna dva desetljeća, napose tijekom II. svjetskog rata sa stotinama tisuća ubijenih, žrtavama koncentracijskih logora, itd. Pritom treba podsjetiti da je otprilike dvije godine prije Konvencije donesena Opća deklaracija Ujedinjenih naroda o pravima čovjeka kao temeljni dokument u području zaštite prava čovjeka i preteča svih kasnijih instrumenata u tom području, pa tako i Europske konvencije, te da su razne udruge građanskog društva, pokreti za ujedinjenu Europu u tada novo stvorenom Vijeću Europe, također u velikoj mjeri doprinijeli nastanku Konvencije. I tako je nastao instrument koji definira temeljna prava čovjeka koja su važna za demokratski način života, pridodavši im međunarodni mehanizam zaštite i nadzora tih prava koja su zajamčena Konvencijom. Prvenstveno treba spomenuti tri novine koje Europska konvencija unosi u međunarodno pravo. U prvom redu to je činjenica da pojedinac može započeti postupak pred Europskim sudom za ljudska prava protiv države za koju smatra da krši njegova prava zajamčena Konvencijom (što je u početku postojalao u nešto izmijenjenom obliku, tj. kao pravo pojedinca da započne postupak pred tadašnjom Komisijom za ljudska prava). Bio je to izuzetno značajan korak pojedinca na putu prema subjektivitetu u međunarodnom pravu. Drugo, predviđeni postupak završava obvezatnom pravosudnom odlukom, dakle, ne odlukom nekog političkog foruma ili organa neke međunarodne organizacije, vec sudskom odlukom protiv države. Treća novina, koja se tijekom vremena pokazala manje važnom, jer je bilo

malo takvih predmeta, je mogućnost da se jedna država stranka Konvencije obrati Sudu sa zahtjevom protiv druge države stranke u kojoj se krše prava čovjeka zajamčena Konvencijom.

Konvencija prvenstveno štiti građanska i politička prava, a u mnogo manjoj mjeri ekonomska i socijalna, premda su u tom pogledu ponešto nadopunili Protokoli. Od 1950. do danas Konvencija je, naime, nadopunjena putem 13 dodatnih protokola. Svaki od tih dodatnih Protokola ima različiti krug ratifikacija tako da nisu sve države koje su vezane Konvencijom ujedno vezane i svim Protokolima.

Nedavnim ulaskom velikog broja novih država u Vijeće Europe potaknuta je značajna reforma tog međunarodnog nadzornog mehanizma uvedenog Konvencijom te od 1. studenog 1998. godine djeluje tzv. novi Sud kao stalni organ, što je jedan od rezultata reforme uvedene Protokolom 11.

Sud za sada okuplja 41 suca, po jednog iz svake države stranke Konvencije, premda su nedavno još dvije države (Armenija i Azerbejdžan) ratificirale Konvenciju. Suci rade paralelno u vijećima od po sedam sudaca (postoje četiri takva vijeća) i velikom vijeću sastavljenom od 17 sudaca (postoje dva). U praksi to izgleda malo drugačije, jer u velikom vijeću uvijek zasijeda 20 sudaca, tri su tzv. zamjenici, što je potrebno radi nesmetanog odvijanja postupka, dok u vijećima od sedam zapravo sjedi deset sudaca. Vijeća zasjedaju jedanput tjedno i svih deset sudaca raspravlja o svakom predmetu; na konačno glasovanje, međutim, ima pravo samo sedam sudaca – tako je propisala Konvencija. Nacionalni sudac uvijek mora biti prisutan u vijeću koje razmatra predmet iz dotične države. Posljedica toga je da predmeti iz pojedine države najčešće dolaze u ono vijeće u kojem je nacionalni sudac. Dakle, nacionalni sudac se ne izuzima iz predmeta protiv svoje države, već – naprotiv – uvijek mora biti u sastavu dotičnog vijeća. Smatra se da je on taj koji najbolje poznaje prilike i pravnu situaciju u vlastitoj zemlji. Nacionalni sudac, međutim, najčešće (a posebno u osjetljivim predmetima) neće ujedno biti i izvjestitelj u predmetima protiv države u čije je ime izabran. Naime, vijeća rade na taj način da za svaki predmet postoji sudac izvjestitelj koji priprema predmet i tijekom vijećanja je on taj koji prvo izlaže svoje viđenje predmeta; nakon njega riječ dobiva nacionalni sudac, a potom se otvara diskusija u kojoj sudjeluju svi ostali suci i, obično na kraju, sam predsjednik. Kad zasjeda u plenumu Sud ne rješava predmete, već odlučuje o raznim upravnim pitanjima, donosi i mijenja svoj Poslovnik, unaprjeđuje i mijenja metode i način rada, i sl.

Važnu ulogu u radu Suda ima tajništvo na čijem su čelu glavni tajnik Suda i dva zamjenika, a svako vijeće također ima svojega tajnika i zamjenika. U tajništvu radi oko 140 pravnika, od čega je ovog časa 60 stalnih i 80 privremenih pravnika, tj. na određeno vrijeme. Svaka država stranka, pa tako i Hrvatska, ima pravo na najmanje jednog stalnog pravnika, a ukupni broj pravnika iz pojedine zemlje ovisi o broju predmeta protiv te zemlje. Ugovorima s privremenim pravnicima Sud nastoji povećati produktivnost i naći izlaz iz situacije u kojoj je zatrpan izuzetno velikim brojem zaostalih predmeta. Od kad je novi Sud počeo s radom, neprestano se radi na poboljšanju i unaprjeđenju načina rada odnosno postupka pred Sudom, kako bi se riješio što veći broj predmeta. Jedan od načina je i angažiranje tako velikog broja privremenih pravnika.

Konvencija obuhvaća područje od oko 800 milijuna stanovnika, a podnositelji zahtjeva se Sudu mogu obratiti na 39 nacionalnih jezika. Ovog časa je pred Sudom oko 20.000 predmeta, od kojih je čak 14.000 registrirano u prošloj godini. U 2001. je godini Sud donio 9.000 odluka, od toga 900 presuda. Što se Hrvatske tiče, u Sudu ovog časa ima oko 400 hrvatskih predmeta. Do sada nismo imali zaostataka s hrvatskim predmetima, ali je oko 300 od spomenutih 400 predmeta stiglo nakon 1. siječnja 2002. što je strašno veliko povećanje.

Tijekom postupka pojedinci se obraćaju Sudu na vlastitom jeziku sve do odluke o dopuštenosti zahtjeva. Nakon toga svaki podnositelj zahtjeva treba imati pravnog zastupnika i treba se obraćati Sudu na jednom od službenih jezika, a to su engleski i francuski. Najveći broj predmeta Sud rješava u prvoj fazi postupka, putem odbora sastavljenih od tri suca. Radi se o predmetima koji su nedopušteni, dakle, ne ispunjavaju formalne uvjete propisane u clanku 35. Konvencije, kao npr. da su upućeni Sudu više od šest mjeseci nakon domaće pravomoćne odluke (uz izuzetak u predmetima kod kojih postoji tzv. kontinuirana situacija – pod taj izuzetak spada npr. i duljina trajanja postupka), ili da nisu iscrpljeni domaći pravni putovi. Isto tako treba podsjetiti da Sud u, u načelu, prihvaća samo predmete koji se odnose na činjenice koje su se dogodile nakon ratifikacije Konvencije, a to je za Hrvatsku bio 5. studeni 1997. Ako makar jedan od tri suca koji odlučuju o dopuštenosti odluke u vezi s tim formalnim kriterijima, iz bilo kojeg razloga ne smatra da zahtjev treba odbaciti, tada predmet dolazi u vijeće. U vijeće, jasno, dolaze i svi ostali predmeti kod kojih nema razloga da se proglase formalno nedopuštenima. Nakon što vijeće odluči o dopuštenosti zahtjeva, tajništvo se stavlja na raspoloženje strankama, tj. podnositelju zahtjeva i agentu države protiv koje je zahtjev podnesen, kako bi se postiglo tzv. prijateljsko rješenje. To je zapravo neka vrsta nagodbe. Ako stranke postignu takav dogovor tada nema presude, što znaci da nema odluke o tome da je država prekršila Konvenciju, ali je država obvezna u određenom roku ispuniti obvezu o kojoj se dogovorila s podnositeljem zahtjeva. Stranke se ujedno obvezuju da neće, nakon što su se nagodile, tražiti podnošenje tog predmeta velikom vijecu. Ako prijateljsko rješenje ne uspije, postupak se nastavlja i usvaja se presuda. Može doći i do održavanja javne rasprave – Hrvatska za sada još nije imala nijednu takvu raspravu pred Sudom.

Presuda Europskog suda za ljudska prava je deklaratorne naravi. To znači da Europski sud ne može izravno ukinuti neku pravomoćnu presudu domaćeg suda ili neku zakonodavnu odredbu, za koje je utvrdio da su suprotne Konvenciji. Država koja prekri Konvenciju je dužna osigurati poduzimanje odgovarajućih korektivnih mjera te dokazati da ih je poduzela. Nadzor nad provođenjem presuda vrši Odbor ministara, koji je politički organ Vijeća Europe. I treba reći da do sada (osim nekoliko izuzetaka) uglavnom nije bilo većih problema s izvršenjem sudskih presuda. Neke države malo otežu, napose ako se radi o vrlo teškim zakonodavnim zahvatima ili o izuzetno velikim sumama novaca. Zašto je država dužna ispunjavati presude? Zato što je dužna poštovati pravila međunarodnog prava o ispunjavanju obveza preuzetih međunarodnim ugovorima, i to u kombinaciji sa člankom 1. Konvencije koji kaže da je država dužna osigurati svima onima koji su pod njenom jurisdikcijom, sva prava zajamčena Konvencijom. Država je u prvom redu dužna zaustaviti povredu Konvencije u konkretnom

slučaju te popraviti posljedice te povrede (to će vrlo često biti novčana naknada, ali ne uvijek samo novčana naknada). Konačno, dužna je spriječiti ponavljanje istih takvih čina odnosno sličnih povreda Konvencije, što znači da će u mnogim slučajevima trebati izmijeniti zakonodavstvo. Ako to ne učini u nekom razumnom roku (Sud najčešće ne određuje taj rok), organi Vijeća Europe koji nadziru izvršenje i na neki nacin potiču države na provođenje presude Suda, vrše politički pritisak kako bi se presuda izvršila. U državama u kojima pravni sustav dobro funkcionira poput, primjerice, zemalja Beneluxa, često kad Sud donese neku važnu presudu na temelju koje treba mijenjati zakonodavstvo, te će države početi s izmjenama i prije slicnih presuda protiv vlastite zemlje kako bi izbjegle da i protiv njih budu upućeni zahtjevi za slične povrede ljudskih prava. Zato je izuzetno važno poznavati i pratiti praksu Europskog suda na razini svake države stranke i upozoravati na važne predmete, kako bi se pravna situacija u zemlji uskladila sa sudskom praksom Europskog suda. Trebalo bi, kad god je to moguće, unaprijed uočiti situacije koje su u suprotnosti s Konvencijom i usklađivati kako zakonodavstvo tako i praksu na nacionalnoj razini, a ne čekati da Sud u nekom konkretnom predmetu ustanovi da je došlo do povrede Konvencije. Taj zadatak pripada u najvećoj mjeri vladinom uredu zastupnika ili agenta, koji državu zastupa pred Sudom.

Već sam ranije spomenula iscrpljenje domaćih pravnih putova koje je predviđeno u članku 35. Konvencije i usko je vezano uz tzv. pojam ili načelo supsidijarnosti koje je jedno od temeljnih načela Konvencije. Radi se o poimanju da temeljna i prvenstvena odgovornost za zaštitu prava čovjeka leži na svakoj državi, a tek potom, supsidijarno, ako niti jedan sud u državi nije ispravio neku povredu prava čovjeka, tek tada bi trebao reagirati Europski sud. Sud u velikoj mjeri poštuje načelo supsidijarnosti, što znači da ne ulazi u ispitivanje činjenica, niti u primjenu prava od strane domaćih sudova; to je prvenstveno ostavljeno nacionalnim sudovima sve dok rezultat nije u suprotnosti s Konvencijom. Temeljna je, pak, zadaća Suda da svojim presudama vrši stalni pritisak na države kako bi one održavale prihvaćene europske standarde. Načelo supsidijarnosti je izričito navedeno u Konvenciji na dva mjesta, u odredbi o iscrpljenju domaćih pravih putova (članak 35.) i u članku 13. koji govori o djelotvornom ili učinkovitom pravnom sredstvu, propisujući da država treba osigurati djelotvorna pravna sredstva za zaštitu prava i sloboda iz Konvencije. Implicite se to načelo proteže kroz cijelu Konvenciju i praksu Europskog suda za ljudska prava. Ono je, osim toga, usko vezano uz nastajanje tzv. doktrine slobode procjene. Slično kao što se smatra da temeljem supsidijarnosti Europski sud djeluje nakon domaćih sudova, na temelju slobode procjene državi se ostavlja prostor za samostalno djelovanje, a opet samo konačni nadzor provodi Europski sud. To je diskrecijski prostor u kojem država, napose u domeni nacionalne sigurnosti, pitanjima zaštite morala, javnog zdravstva, i sl. ima prilično široku slobodu odlučivanja, a Sud će samo prosuditi je li konačni rezultat u skladu s Konvencijom. Tako je npr. u presudi Kutić protiv Hrvatske Europski sud izričito rekao da se u tom predmetu radi o materiji u kojoj Republika Hrvatska uživa odredjenu slobodu procjene.

Prelazeći na drugi dio, željela bih još jednom istaknuti svu važnost poznavanja sudske prakse Europskog suda. Nije dovoljno upoznati samo tekst Konvencije i dodatnih protokola, jer sudska praksa predstavlja bitni i nerazdvojni njihov dio koji je nužno poznavati: s jedne strane, kako bi se

moglo obrazložiti pojedinačne zahtjeve, a s druge pak, kako bi se pomoglo vlastitoj državi u postupku pred Sudom. Često se Konvenciju opisuje kao tzv. «živući instrument», jer se putem sudske prakse koja je evolutivna i dinamična, svakodnevno tumače, a time i neprestano dalje razvijaju ljudska prava zajamčena Konvencijom.

Zato ću na primjerima triju presuda protiv Hrvatske, prije nego što ukažem na rješenje koje je usvojeno u konkretnom predmetu, pokazati kako se u dotičnim područjima tijekom vremena razvijala i mijenjala sudska praksa.

U prvom ću redu nešto reći o evoluciji članka 6. Konvencije glede duljine trajanja postupka, napose vezano uz članak 13. Konvencije koji jamči pravo na djelotvorni pravni lijek - budući da se radi o izuzetno važnom pitanju za Hrvatsku. Članak 6., koji govori o pravu na pošteno suđenje, određuje da postupak treba biti završen u razumnom roku. Stranke se radi povrede razumnog roka mogu obraćati Europskom sudu bilo u tijeku trajanja postupka za koji smatraju da predugo traje, ili nakon završenog postupka (čak i ako su izgubile spor) pri čemu je važno da to bude u roku od šest mjeseci nakon pravomoćne odluke. U početku se razumni rok primjenjivao samo na rad redovitih sudova, ali je s vremenom Sud tu svoju praksu o razumnom roku proširio i na rad ustavnih sudova. Ustavni sudovi Španjolske, Njemačke, Poljske i razni drugi, a nedavno i hrvatski Ustavni sud, to su morali prihvatiti. Suočavajući se, pak, s ogromnim brojem predmeta duljine postupka koji su dolazili iz jedne zemlje, Italije, Europski je sud otišao još korak dalje te je u predmetu Botazzi protiv Italije ustanovio da je veliki broj predmeta duljine postupka u Italiji doveo do toga da se može govoriti o postojanju tzv. upravne prakse duljine postupka u toj zemlji. Što to znači? U Italiji je godinama dolazilo do masovnih povreda duljine trajanja postupka, odnosno, do ponavljanja istih čina kršenja Konvencije; nije se, dakle, radilo samo o izoliranim povredama Konvencije, već je stvorena stalna praksa, određeni uzorak ponašanja koje krši Konvenciju, a koje se službeno toleriralo od strane države. Čini se da su u Italiji jednostavno smatrali kako je jeftinije plaćati ogromne sume podnositeljima zahtjeva koji dolaze pred Europski sud, nego reformirati pravosuđe. Sud je temeljem takve situacije ustanovio da u Italiji postoji upravna praksa kršenja razumnog roka te da se radi o posebno teškoj povredi Konvencije. Posljedice su takve odluke da se od tog časa na sve talijanske predmete duljine postupka primjenjuje posebni, skraćeni, postupak te su jako uvećane naknade koje Sud daje podnositeljima zahtjeva iz Italije.

Do najvećeg je zaokreta glede problema razumnog roka došlo 2000. godine presudom Kudla protiv Poljske u kojoj je novi Europski sud prvi puta u nekom predmetu duljine trajanja postupka razmatrao i povredu članka 13. Konvencije. Do tada je Sud uvijek smatrao da je pitanje djelotvornog pravnog lijeka (članak 13.) apsorbirano člankom 6. Konvencije koji nalaže suđenje u razumnom roku i koji daje stroža jamstva od članka 13. Konvencije. Sud je, međutim, u velikoj mjeri pod pritiskom znatnog broja takvih predmeta, izmijenio svoju dotadašnju praksu i tom je presudom obvezao države stranke Konvencije da uvedu domaći pravni lijek za duljinu postupka te da same daju naknade u onom smislu i po onim kriterijima po kojima to čini Europski sud. Posljedica je toga da u slučaju postojanja domaćeg pravnog lijeka podnositelji zahtjeva - i kad se radi o duljini trajanja postupka - mogu doći

pred Europski sud tek nakon iscrpljenih domaćih pravnih sredstava.

Za povredu razumnog roka može se pred Sudom tražiti, i dobiti, novčana naknada (čl. 41. Konvencije). Najčešće se traži, pa i dosudjuje, tzv. nematerijalna šteta (i sudski troškovi). To je naknada za stres, duševnu bol, i sl. koje je podnositelju postupka prouzročilo predugo trajanje postupka. Vrlo rijetko Sud u predmetima duljine postupka dosuđuje i materijalnu štetu i to samo kad se može dokazati uzročna veza između duljine postupka i nastale materijalne štete, a to je, ponavljam, izuzetno rijetko.

Glede Hrvatske situacija je sljedeća: prije godinu dana, 26. 7. 2001, Sud je u presudi Horvat protiv Hrvatske ustanovio da u Hrvatskoj ne postoji djelotvorno pravno sredstvo za duljinu postupka. Ured zastupnika Hrvatske pri Europskom sudu je zastupao mišljenje da takvo sredstvo postoji i da je ono sadržano u članku 59. stavak 4. tadašnjeg Ustavnog zakona o Ustavnom sudu iz 1999. godine; Sud se, međutim, nije složio s takvim mišljenjem. Potom je Hrvatska 15. 3. 2002. godine usvojila Ustavni zakon o izmjenama i dopunama Ustavnog zakona o Ustavnom sudu te je novim člankom 63. uvela sredstvo za duljinu trajanja postupka. Nakon 1. travnja 2002. pred Europskim je sudom znatno pao broj takvih predmeta iz Hrvatske, što znači da su naši podnositelji zahtjeva i njihovi odvjetnici shvatili novu situaciju temeljem koje se sada u slučaju prekoračenja razumnog roka prvo trebaju obratiti Ustavnom sudu. Ako nisu zadovoljni, teoretski i nakon toga mogu doći pred Europski sud za ljudska prava; treba se, međutim, nadati da će naš Ustavni sud slijediti smjernice i kriterije postavljene u Strasbourgu, a tada više ne bi postojali uvjeti za podnošenje zahtjeva Europskom sudu.

Druga presuda koju želim spomenuti je Kutić protiv Hrvatske u kojoj je Sud našao da je povrijeđeno pravo na pristup sudu kao sastavni dio prava na pošteno sudjenje iz članka 6. Konvencije. Pravo pristupa sudu se ne spominje u samom tekstu članka 6. te je Sud već dosta rano u svojoj praksi uočio taj «manjak». Stoga je 1975. u presudi Golder protiv Ujedinjenog Kraljevstva rekao da je pristup sudu sastavni dio jamstava na pravično suđenje iz članka 6. Konvencije, odnosno, da pravično, javno i brzo suđenje nemaju nikakve vrijednosti ako uopće nema sudskog postupka. Time je i pravo pristupa sudu uključeno u garancije članka 6. Konvencije. Kasnije je Sud u presudi Hornsby protiv Grčke (1997) otišao još korak dalje te je u isti članak 6. uključio i izvršenje, rekavši da se izvršenje presude smatra sastavnim djelom sudskog postupka za svrhe članka 6. Konvencije, što drugim riječima znači da bi pravo na suđenje bilo iluzorno kad ono ne bi uključivalo i izvršenje pravomoćne sudske presude. S tim u vezi želim spomenuti da je pred Sudom, nažalost, vrlo velik broj predmeta iz Hrvatske koji se odnose baš na to pitanje - obraćaju nam se građani koji imaju pravomoćne odluke naših sudova, ali ih ne uspijevaju izvršiti.

No, da se vratimo pristupu sudu i presudi Kutić. U tom su se predmetu podnositelji žalili na činjenicu da je Hrvatska 1996. godine ukinula čl. 180. Zakona o obveznim odnosima (ZOO) koji je predviđao naknadu štete prouzročene tzv. terorističkim aktima, obvezavši se da će donijeti nove propise koji će urediti istu materiju, što međutim do danas nije učinila. Radi se o vrlo složenom problemu, napose zato što Sud u načelu u sličnim okolnostima reguliranje takvih pitanja u značajnoj mjeri prepušta samoj državi, i to na temelju doktrine slobode procjene. Hrvatska je država, znači, u načelu imala

pravo iznova i drukčije regulirati pitanje spomenutih naknada, ali ona to pravo nije iskoristila na vrijeme, ako mogu tako reći. Ne donijevši nikakav novi zakon kroz vrlo dugo razdoblje, nikakve nove odredbe koje je bila obećala, ona je prekršila pravo podnositelja zahtjeva na pristup sudu. Da pojasnim: povreda Konvencije nije učinjena samim time što je država željela dotično pitanje regulirati drukčije nego ranije - to je ona mogla učiniti oslanjajući se u dosta velikoj mjeri na vlastitu procjenu, kao što je Sud i naglasio u stavku 31. presude Kutić: «Sud prihvaća da situacija u kojoj je protiv države podnesen značajan broj tužbi u kojima se zahtijeva isplata velikih novčanih iznosa može nalagati donošenje određenih dodatnih propisa od strane države, te da u tom smislu države uživaju određeno pravo procjene. Međutim, mjere koje se poduzimaju moraju biti u skladu s člankom 6. stavak 1. Konvencije.» U okviru tog nadzora Sud je u datim okolnostima u kojima se desilo da niti nakon punih šest godina nije donesen nikakav novi propis, zaključio da je prekršeno pravo na pristup sudu. O tome kako bi Sud bio odlučio da mu je takav predmet bio podnesen ubrzo nakon ukidanja spomenutih zakonskih odredbi, danas je nepotrebno spekulirati, odnosno, teško je znati bi li Sud bio odlučio na isti nacin. Ovom bih prilikom, međutim, željela reći da se u našem tisku javljaju razni, najčešće netočni, komentari te presude Kutić. Onoliko koliko ja smijem govoriti o tim stvarima, želim reći da nije točno da je Sud bilo gdje u presudi tražio od Hrvatske, niti da je predsjednik Europskog suda prigodom svoje nedavne posjete Zagrebu igdje rekao, da je potrebno vratiti članak 180. ZOO onakav kakav je bio u času ukidanja. O tome na taj način uopce nije bilo riječi, niti je bilo tko od dužnosnika s hrvatske strane s kojima smo razgovarali izrazio takvo mišljenje. Prema tome za očekivati je da će država donijeti nove zakonske odredbe temeljem ovih kriterija koje sam upravo navela.

Treća presuda je Mikulić protiv Hrvatske, a odnosi se na postupak za utvrđivanje očinstva i zaštitu prava na privatni život prema članku 8. Konvencije. Sud se već vrlo rano u svojem djelovanju, u predmetima zaštite prava djece rođene u braku i izvan braka, izjasnio u prilog smanjivanju razlika među njima te je 1979. u čuvenoj presudi Marckx protiv Belgije rekao da se razlike u postupanju između zakonite i nezakonite djece, koje su se smatrale dopuštenima i normalnima u vrijeme kad je stvarana Konvencija, više ne mogu smatrati prihvatljivima. Sud je, također, u više navrata (npr. u predmetima Rassmusen protiv Danske ili Keegan protiv Irske) rekao da postupci za utvrđivanje očinstva spadaju u domašaj članka 8. Konvencije (pravo na poštovanje privatnog i obiteljskog zivota) te je u vezi s tim ujedno definirao obiteljski život rekavši da pojam obiteljskog života «nije isključivo ograničen na odnose koji se temelje na braku, već može obuhvatiti i druge *de facto* obiteljske veze kad je u dovoljnoj mjeri prisutna stalnost». Zanimljivo je da prema praksi Suda obiteljski život u smislu članka 8. obuhvaća *de facto* veze ne samo kad partneri žive zajedno vanbračno, nego čak i vanbračne partnere koji ne stanuju zajedno (living «together apart»). U predmetu Mikulić, medjutim, nije uspostavljena nikakva obiteljska veza izmedju djevojčice koja se obratila Sudu smatrajući da njezin postupak za utvrđivanje očinstva predugo traje i da joj je time povrijeđeno pravo zaštićeno člankom 8., i njenog navodnog oca. Obiteljski život se nije mogao uspostaviti između te djevojčice i osobe koja poriče, ili ne želi priznati, očinstvo i među kojima nikad nije bilo nikakvih kontakata. Stoga

je Sud to kvalificirao kao pravo na zaštitu privatnog života. Već je u ranijim presudama Sud rekao da pravo na poštovanje privatnog života mora u određenoj mjeri obuhvatiti pravo na uspostavljanje odnosa s drugim ljudskim bićima te da pozitivne obveze koje je država dužna poduzeti mogu podrazumijevati usvajanje mjera namijenjenih osiguravanju privatnog žiota čak i u sferi odnosa između pojedinaca. U presudi Mikulić Sud je, međutim, učinio još jedan važan korak naprijed u zaštiti privatnog života (koji će, svakako, imati reperkusija i na druge predmete pred Sudom koji se odnose na privatni život) kad je, prvi puta u svojoj praksi, rekao da «osobe u situaciji podnositeljice zahtjeva imaju vitalni interes koji je zaštićen Konvencijom, primati informacije potrebne kako bi se otkrila istina o nekom važnom vidu njihovog osobnog identiteta». U predmetu Mikulić je, kaže Sud, «neučinkovitost sudova ...podnositeljicu zahtjeva dovela u stanje produljene neizvjesnosti u pogledu njenog osobnog identiteta». Time su hrvatske vlasti podnositeljici propustile osigurati poštovanje njenog privatnog života, na što ima pravo temeljem Konvencije, te je došlo do povrede članka 8. Konvencije.

Na kraju, dopustite mi zaključno još samo dvije opaske, vezano opet na neki način uz načelo supsidijarnosti. Želim istaći da su domaći sudovi izuzetno važni partneri Europskog suda za ljudska prava u zaštiti prava čovjeka, jer je suradnja sa sudovima u svakoj državi, naročito s najvišim sudovima, npr. ustavnim sudom, sastavni dio cjelovitog sustava zaštite ljudskih prava. U Hrvatskoj, suci imaju mogućnost (koju, nažalost, još rijetko koriste) direktno, izravno, primjenjivati Konvenciju o ljudskim pravima. Premda je većina prava iz Konvencije istovremeno navedena i zaštićena i u našem Ustavu, ipak treba uvijek ponovno podsjetiti i na tu mogućnost. Kad bi sudovi, a napose najviši sudovi u državi (pri čemu bi im trebali pomagati i odvjetnici) primjenjivali Konvenciju na način kako to čini Europski sud, primjenjujući iste kriterije, i češće se pozivali na njegove presude, to bi svakako predstavljalo važan pomak u razvoju zaštite ljudskih prava u Hrvatskoj.

I konačno, treba biti svjestan da presude Europskog suda nipošto nisu kazna za državu. One trebaju biti poticaj za usvajanje i održavanje europskih standarda, kao i za reforme i usavršavanje pravnog sustava. Zato se nadam da će, kad idući puta dođem ovamo - ako me profesor Barbić opet pozove budući da sam govorila 50 a ne 45 minuta - da će tada već kod nas biti u tijeku ozbiljna i promišljena reforma pravosuđa. Svi mi znamo koliko je to zahtjevan i dugoročan proces, stoga - treba krenuti. Hvala vam.

VIJEĆE EUROPE

EUROPSKI SUD ZA LJUDSKA PRAVA

Povijesni razlozi nastanka, organizacija i postupak

Informacije iz ovog priloga potječu od Kancelara Europskog suda za ljudska prava

S njemačkog preveo: Josip Škarpa

I. POVIJESNI RAZLOZI NASTANKA

A. Europska konvencija o ljudskim pravima iz 1950. godine

1. *Konvenciju o zaštiti ljudskih prava i temeljnih sloboda* donijelo je Vijeće Europe. Potpisana je 4. studenog 1950. u Rimu i stupila je na snagu 1953. godine. Cilj donositelja *Konvencije* bio je da se učine prvi koraci ka kolektivnoj provedbi prava zajamčenih Općom konvencijom o ljudskim pravima UN-a iz 1948. godine.

2. Pored popisa građanskih i političkih prava i sloboda *Konvencija* je uredila sustav provedbe obveza koje su prihvatile države članice. Tri organa su među sobom podijelila ovu odgovornost: Europska komisija za ljudska prava (osnovana 1954.), Europski sud za ljudska prava (osnovan 1959.) i Odbor ministara Vijeća Europe, koji čine ministri vanjskih poslova država članica ili njihovi zamjenici.

3. Prema *Konvenciji* iz 1950. države članice, a i fizičke osobe, udruge osoba i nedržavne organizacije, ukoliko je dotična država članica dopustila pravo na podnošenje individualne tužbe, mogu uložiti tužbu protiv države članice temeljem mogućih povreda prava iz Konvencije.

Formalne pretpostavke dopustivosti tužbe prvo ispituje *Komisija*. Ukoliko su tužbe formalno ispravne,

a mirno rješenje spora nije postignuto, Komisija sastavlja izvješće u kojemu je sažeto činjenično stanje i u kojemu Komisija daje svoje mišljenje o utemeljnosti slučaja. Ovo izvješće se dostavlja Odboru ministara.

4. Ukoliko se dotična država obvezala na poštivanje odluka suda, kako Komisija tako i svaka država koje se to tiče, mogu u roku od 3 mjeseca nakon dostave izvješća Komisije Odboru ministara, slučaj dovesti pred sud, a kako bi se došlo do konačne obvezujuće odluke. Pojedinci ranije nisu imali pravo svoje tužbe iznositi pred sud.

Ako slučaj ne bi bio predan sudu, odlučivanje o postojanju povrede Konvencije i ukoliko je to potrebno, izricanju pravedne odštete žrtvi bilo je u domeni Odbora ministara. Odbor ministara je također bio odgovoran za nadziranje provedbe odluka suda.

B. Daljnji razvoj Konvencije

5. Od stupanja na snagu Konvencije doneseno je 11 dodatnih protokola. Dodatni protokoli br. 1, 4, 6 i 7 uveli su neka daljnja prava i slobode u Konvenciju. Dodatni protokol br. 2 ovlastio je sud za traženje vještačenja. Dodatni protokol br. 9 je dao pravo pojedincima da svoje tužbe podnose sudu pod uvjetom da je dotična država upravo taj Dodatni protokol ratificirala i da je suglasnost dao Odbor, koji je u samu stvar već uključen. Dodatni protokol br. 11 je iznova organizirao kontrolni mehanizam. Preostali protokoli tiču se organizacije i postupka pred organima *Konvencije*.

6. Od godine 1980. broj tužbi uloženih organima *Konvencije* raste na takav način, da je postalo teško okončati postupke u primjerenom roku. Ovaj problem se još više zaoštrio primitkom novih država članica (1990).

Broj godišnje registriranih tužbi porastao je od 404 tužbe 1980. godine na 2037 1993. godine. Do 1997. godine ovaj broj se još udvostručio (4750). Broj neregistriranih ili privremenih sudskih spisa, koji su svake godine bivali dostavljeni Komisiji, narastao je godine 1997. na preko 12000. Statistika suda je izgledala slično: broj tužbi koje su godišnje dostavljene sudu je narastao sa 7 - 1981. godine na 52 - 1993. godine i 119 - 1997. godine.

7. Povećani broj slučajeva je prouzročio dugu raspravu o nužnosti reforme nadzornih organa *Konvencije*. Mišljenja o preuređenju sustava u početku rasprava su se razilazila. Konačno je ipak kao rješenje prihvaćeno osnivanje jednog jedinog stalnog suda. Cilj je zapravo bio, pojednostaviti strukturu kako bi se skratilo trajanje postupaka i istovremeno ojačao sudski karakter sustava, tako bi se dostigla opća obveznost odluka suda i da bi se dokinula pravosudna uloga Odbora ministara.

Dana 11. svibnja 1994. potpisan je *Dodatni protokol br. 11 pod nazivom «Preuređenje kontrolnog mehanizma».*

II. NOVI EUROPSKI SUD ZA LJUDSKA PRAVA

A. Prijelazno vrijeme

8. Dodatni protokol br. 11 morale su ratificirati sve države članice i stupio je na snagu godinu dana

nakon što je dostavljena posljednja isprava o ratifikaciji. Ova isprava dostavljena je Vijeću Europe u listopadu 1997. Uslijedila je faza pripreme u trajanju od jedne godine tijekom koje su birani suci koji su sudjelovali na konferencijama kako bi se poduzele nužne organizacijske i postupovne mjere za osnivanje suda. Suci su osobito birali svog predsjednika, dva podpredsjednika (koji su istovremeno predsjednici jednog odjela), dva daljnja predsjednika odjela, četiri podpredsjednika odjela, jednog kancelara i dva zamjenika tajnika. Osim toga donijeli su novi pravilnik o postupku.

Novi Europski sud za ljudska prava počeo je s radom dana 1. studenog 1998. godine stupanjem na snagu 11. dodatnog protokola. Dana 31. listopada s radom je prestao stari sud. Protokol je ipak predviđao da će Komisija nastaviti s radom još jednu godinu (do 31. listopada 1999.) kako bi obradila slučajeve koji su pripušteni na odlučivanje prije stupanja na snagu 11. dodatnog protokola.

B. Organizacija suda

9. Novi Europski sud za ljudska prava, koji je osnovan u skladu s izmijenjenom *Konvencijom* sastoji se od broja sudaca, koji odgovara broju država članica (sada je taj br. 41). Broj sudaca koji bi imali isto državljanstvo nije ograničen. Suce na razdoblje od 6 godina bira Parlamentarna skupština Vijeća Europe. Vrijeme službovanja polovice sudaca koji su izabrani na prvim izborima završava nakon 3 godine, kako bi se osiguralo, da se polovica sudaca svake tri godine iznova bira.

Suci kao osobe članovi su suda, a ne predstavljaju pojedine države. Oni se ne smiju baviti djelatnošću koja je nespojiva s njihovom neovisnošću, nepristranošću ili sa zahtjevima koje postavlja posao u punom radnom vremenu. Vrijeme njihovog službovanja završava s navršenih 70 godina života.

Skupština svih sudaca na razdoblje od 3 godine bira predsjednika, dva podpredsjednika i još dva predsjednika odjela.

10. Sud je u skladu s pravilnikom suda podijeljen u 4 odjela u kojima je sastav sudaca usklađen zemljopisno i s obzirom na predstavljenost spolova, te vodi računa i o različitim pravnim sustavima država članica. Podpredsjednici suda predsjedavaju svaki po jednim odjeljenjem, a dva ostala predsjednika odjela koje je izabrao sud predsjedavaju dvama preostalim odjelima. Predsjednici odjela podupiru podpredsjednika odjela i po potrebi ih zamjenjuju.

11. Unutar svakog odjela formiraju se na razdoblje od 12 mjeseci odbori od po 3 sudca. Odbori su važan element preuređenja, budući da su oni od sada odgovorni za izbor slučajeva, što je ranije bio posao Komisije.

12. Unutar svakog odjela formiraju se vijeća od sedam članova koja se temelje na principu rotacije, pri čemu vijeću u svakom slučaju pripadaju predsjednik odjela i sudac koji je izabran od strane države članice, koja je ujedno i stranka u sporu. Ukoliko ovaj drugi sudac nije član vijeća, on u vijeću sjedi ex offo. Članovi vijeća koji nisu punopravni članovi jesu zamjenski članovi.

13. Veliko vijeće se sastoji od 17 sudaca i bira se na razdoblje od 3 godine. Pored članova po službenoj dužnosti – predsjednika, podpredsjednika i predsjednika odjela – veliko vijeće se formira rotacijom dvaju grupa, koje se mijenjaju svakih 9 mjeseci. Ove grupe se sastavljaju uzimajući u obzir zemljopisnu ujednačenost, te trebaju odražavati različite pravne tradicije.

C. Postupak pred sudom

1. Općenito

14. Svaka država članica (tzv. državna tužba) ili svaki pojedinac, koji tvrdi da je žrtva povrede *Konvencije* (tzv. individualna tužba), može tužbu uložiti izravno sudu u Strasbourgu s tvrdnjom da je jedno od prava zajamčenih *Konvencijom* povrijeđeno od strane države članice. Formular za tužbu i tiskanica s uputama može se zatražiti od ureda suda.

15. Postupak pred novim Europskim sudom za ljudska prava je kontradiktoran i javan. Rasprave su načelno javne, osim ako vijeće ili veliko vijeće zbog posebnih okolnosti slučaja odluči drugačije. Pismena koja su stranke dostavile uredu suda dostupna su javnosti.

16. Individualni tužitelji mogu i sami uložiti tužbu, ali se preporuča zastupanje od strane odvjetnika i čak je takvo zastupanje nužno na raspravama ili nakon odluke, da je tužba formalno ispravna, tj. pripuštena u daljnji postupak.

17. Službeni jezici suda su engleski i francuski. Tužbe se čak mogu dostaviti i na jednom od službenih jezika država potpisnica ugovora. Ali čim je utvrđeno da je tužba formalno ispravna, mora se primijeniti jedan od službenih jezika suda, osim ako predsjednik vijeća ili velikog vijeća dopusti uporabu jezika tužitelja.

2. Postupak formalnog preispitivanja tužbe

18. Svaka individualna tužba dodjeljuje se odjelu, čiji predsjednik imenuje podnositelja izvješća. Nakon prvog preispitivanja slučaja podnositelj izvješća odlučuje treba li slučaj obraditi pred tročlanim odborom ili pred sudskim vijećem.

19. Odbor može bez daljnjeg preispitivanja jednoglasno odlučiti o tome je li tužba formalno ispravna (tj. pripustiva) ili se može brisati iz registra tužbi.

20. Individualne tužbe koje odbor pripusti (tj. formalno ispravne tužbe) ili one koje su izravno dostavljene vijeću, kao i državne tužbe preispituju se pred vijećem. Vijeća utvrđuju kako formalnu ispravnost tako i utemeljenost tužbe i to u pravilu odvojeno, ali također i skupa, kad je takav postupak prikladan.

21. Vijeća mogu slučaj u svakom stadiju postupka uputiti pred veliko vijeće, ako slučaj postavlja teško pitanje tumačenja ove *Konvencije* ili ako postoji rizik odstupanja od već donesenih presuda, osim ako jedna od stranaka odbije upućivanje u roku od jednog mjeseca od obznane namjere upućivanja.

22. Prvi dio postupka se u pravilu odvija pismeno, iako vijeća također mogu odlučiti, da održe raspravu. U ovom slučaju se raspravlja i o problemima koji se odnose na utemeljenost.

23. Odluke vijeća o formalnoj ispravnosti tužbi, donesene većinom glasova, moraju se obrazložiti i objaviti.

3. Postupak o utemeljenosti

24. Čim je vijeće pripustilo tužbu u daljnji postupak, ono može strankama naložiti dostavu dodatnog dokaznog materijala i pisanih prikaza uključujući tu i zahtjev tužitelja za pravednom odštetom, te sudjelovanje na javnoj sudskoj raspravi po pitanju utemeljenosti slučaja.

25. Predsjednik vijeća može u interesu pravosudne djelatnosti svakoj državi ugovornici, koja nije stranka u postupku, ili svakoj osobi koje se slučaj tiče, a koja nije tužitielj, dati prigodu da u pisanom obliku zauzme stajalište o slučaju i da pod posebnim okolnostima sudjeluje na raspravi. Država ugovornica, čiji je tužitelj državljanin, ovlaštena je umiješati se u sudski postupak.

26. Za vrijeme trajanja postupka o utemeljenosti tužbe mogu se uz posredovanje kancelara voditi rasprave o mirnoj nagodbi. Ove rasprave su povjerljive.

4. Presude

27. Vijeća odluke donose većinom glasova. Svaki sudac, koji je sudjelovao u ispitivanju slučaja ima pravo presudi suda dodati posebni glas, koji je bilo u suglasnosti ili u nesuglasju s odlukom većine, ili dati jednostavnu izjavu da nije suglasan s presudom.

28. U roku od 3 mjeseca od donošenja presude vijeća svaka stranka može zahtijevati upućivanje slučaja pred veliko vijeće, ukoliko predmet postavlja neko teško pitanje tumačenja ili primjene *Konvencije* ili pak dalekosežno pitanje od općeg značaja. O takvim zahtjevima odlučuje odbor od 5 sudaca velikog vijeća. Ovom odboru pripadaju: predsjednik suda, predsjednici odjela, uz iznimku onoga koji pripada odjelu koji je donio presudu, te još jedan dodatni sudac koji se određuje rotacijom onih sudaca koji nisu članovi vijeća koje je odlučilo u konkretnom slučaju.

29. Odluka vijeća postaje pravomoćna istekom tromjesečnog roka ili ranije, ako stranke izjave da nemaju namjeru zahtijevati upućivanje slučaja pred veliko vijeće ili nakon odbijanja zahtjeva za upućivanje od strane odbora.

30. Ukoliko odbor prihvati zahtjev, veliko vijeće donosi odluku o obliku presude. Veliko vijeće odlučuje većinom glasova i njegove su odluke pravomoćne.

31. Sve pravomoćne odluke suda obvezujuće su za one države članice protiv kojih su tužbe bile podnesene.

32. Odbor ministara Vijeća Europe je odgovoran za nadzor nad provođenjem presuda. Njegov zadatak je osigurati da države koje su počinile povredu Konvencije poduzmu potrebne mjere kako bi ispunile konkretne i opće obveze sadržane u presudi.

5. Različiti stavovi

33. Na zahtjev Odbora ministara sud može dati stručno mišljenje o pravnim pitanjima koja se tiču tumačenja Konvencije i dodatnih protokola.

Odluka Odbora ministara o zahtjevu za stručno mišljenja suda donosi se većinom glasova.

34. Stručna mišljenja sastavlja veliko vijeće, a prihvaćaju se većinom glasova. Svaki sudac može stručnom mišljenju dodati posebni glas ili jednostavnu tvrdnju o nedavanju suglasnosti takvom stručnom mišljenju.

KONVENCIJA

ZA ZAŠTITU LJUDSKIH PRAVA I TEMELJNIH SLOBODA TE PROTOKOLA BR. 1, PROTOKOLA BR. 4, PROTOKOLA BR. 6 I PROTOKOLA BR. 7. UZ TU KONVENCIJU

MINISTARSTVO VANJSKIH POSLOVA

Na temelju članka 5. Zakona o potvrđivanju Konvencije za zaštitu ljudskih prava i temeljnih sloboda i protokola br. 1, 4, 6, 7 i 11 uz Konvenciju za zaštitu ljudskih prava i temeljnih sloboda (»Narodne novine - Međunarodni ugovori«, broj 18/97), Ministarstvo vanjskih poslova Republike Hrvatske objavljuje pročišćene tekstove

I.

S obzirom na to da je Protokol br. 11 uz Konvenciju za zaštitu ljudskih prava i temeljnih sloboda, objavljen u »Narodnim novinama - Međunarodni ugovori« broj 18/1997, kojim se mijenjaju i dopunjuju sama Konvencija i protokoli broj 1, 4, 6 i 7 uz tu Konvenciju, stupio na snagu 1. studenoga 1998, te da su odnosne izmjene i dopune time postale sastavnim dijelom Konvencije i navedenih protokola, objavljenih u »Narodnim novinama - Međunarodni ugovori« broj 18/1997. zajedno s izjavama

Republike Hrvatske vezanim uz tadašnje članke 25. i 46. Konvencije i rezervom u skladu s tadašnjim člankom 65, a novim člankom 57. Konvencije, objavljuju se pročišćeni tekstovi:

1. Konvencije za zaštitu ljudskih prava i temeljnih sloboda, sastavljeno u Rimu 4. studenoga 1950;
2. Protokola uz konvenciju za zaštitu ljudskih prava i temeljnih sloboda, sastavljenog u Parizu, 20. ožujka 1952;
3. Protokola br. 4 uz Konvenciju za zaštitu ljudskih prava i temeljnih sloboda o osiguranju određenih prava i sloboda uz ona uključena u Konvenciju i Protokol br. 1, sastavljenog u Strasbourgu 16. rujna 1963;
4. Protokola br. 6 uz Konvenciju za zaštitu ljudskih prava i temeljnih sloboda o ukidanju smrtne kazne, sastavljenog u Strasbourgu 28. travnja 1983;
5. Protokola br. 7 uz Konvenciju za zaštitu ljudskih prava i temeljnih sloboda, sastavljenog u Strasbourgu 22. studenoga 1984.

Tekst konvencije navedene u ovoj točki pod br. 1. već je prije izmijenjen u skladu s odredbama Protokola br. 3 koji je stupio na snagu 21. rujna 1970, Protokola br. 5 koji je stupio na snagu 20. prosinca 1970. i Protokola br. 8 koji je stupio na snagu 1. siječnja 1990. Sadrži također tekst Protokola br. 2 koji, u skladu s člankom 5, stavkom 3. navedenog Protokola, čini sastavni dio Konvencije od 21. rujna 1970, kad je stupio na snagu. Sve odredbe koje su bile mijenjane ili dodavane tim protokolima zamjenjuju se Protokolom br. 11 od dana njegova stupanja na snagu 1. studenoga 1998, čime je ukinut Protokol br. 9 koji je stupio na snagu 1. listopada 1994.

II.

Pročišćeni tekstovi međunarodnih ugovora iz točke I. u izvorniku na engleskom i u prijevodu na hrvatski jezik glase:

CONVENTION FOR PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Rome, 4. XI. 1950

The governments signatory hereto, being members of the Council of Europe, Considering the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10th-December-1948;

Considering that this Declaration aims at securing the universal and effective recognition and observance of the rights therein declared;

Considering that the aim of the Council of Europe is the achievement of greater unity between its members and that one of the methods by which that aim is to be pursued is the maintenance and further realisation of human rights and fundamental freedoms;

Reaffirming their profound belief in those fundamental freedoms which are the foundation of justice

and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the human rights upon which they depend;

Being resolved, as the governments of European countries which are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law, to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration,

Have agreed as follows:

Article 1.1

OBLIGATION TO RESPECT HUMAN RIGHTS

The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.

SECTION I1 - *Rights and freedoms*

Article 2.1

RIGHT TO LIFE

1 Everyonežs right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2 Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

a) in defence of any person from unlawful violence;

b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

c) in action lawfully taken for the purpose of quelling a riot or insurrection.

Article 3.1

PROHIBITION OF TORTURE

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 4.1

PROHIBITION OF SLAVERY AND FORCED LABOUR

1 No one shall be held in slavery or servitude.

2 No one shall be required to perform forced or compulsory labour.

3 For the purpose of this article the term "forced or compulsory labour" shall not include:

a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;

b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;

c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
d) any work or service which forms part of normal civic obligations.

Article 5.1

Right to liberty and security

1 Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
a) the lawful detention of a person after conviction by a competent court;
b) the lawful arrest or detention of a person for non- compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
3 Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
4 Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
5 Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.

Article 6.1

RIGHT TO A FAIR TRIAL

1 In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public

may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2 Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3 Everyone charged with a criminal offence has the following minimum rights:

a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

b) to have adequate time and facilities for the preparation of his defence;

c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Article 7.1

NO PUNISHMENT WITHOUT LAW

1 No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

2 This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

Article 8.1

RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE

1 Everyone has the right to respect for his private and family life, his home and his correspondence.

2 There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 9.1

FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

1 Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or

private, to manifest his religion or belief, in worship, teaching, practice and observance.
2 Freedom to manifest onežs religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Article 10.1

FREEDOM OF EXPRESSION

1 Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2 The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Article 11.1

FREEDOM OF ASSEMBLY AND ASSOCIATION

1 Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2 No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

Article 12.1

RIGHT TO MARRY

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

Article 13.1

RIGHT TO AN EFFECTIVE REMEDY

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an

effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

Article 14.1

PROHIBITION OF DISCRIMINATION

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Article 15.1

DEROGATION IN TIME OF EMERGENCY

1 In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

2 No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.

3 Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.

Article 16.1

RESTRICTIONS ON POLITICAL ACTIVITY OF ALIENS

Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

Article 17.1

PROHIBITION OF ABUSE OF RIGHTS

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

Article 18.1

LIMITATION ON USE OF RESTRICTIONS ON RIGHTS

The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

SECTION II2 - *European Court of Human Rights*

Article 19

ESTABLISHMENT OF THE COURT

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

Article 20

NUMBER OF JUDGES

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

Article 21

CRITERIA FOR OFFICE

1 The judges shall be of high moral character and must either possess the qualifications required for appointment to high judicial office or be jurisconsults of recognised competence.

2 The judges shall sit on the Court in their individual capacity.

3 During their term of office the judges shall not engage in any activity which is incompatible with their independence, impartiality or with the demands of a full-time office; all questions arising from the application of this paragraph shall be decided by the Court.

Article 22

ELECTION OF JUDGES

1 The judges shall be elected by the Parliamentary Assembly with respect to each High Contracting Party by a majority of votes cast from a list of three candidates nominated by the High Contracting Party.

2 The same procedure shall be followed to complete the Court in the event of the accession of new High Contracting Parties and in filling casual vacancies.

Article 23

TERMS OF OFFICE

1 The judges shall be elected for a period of six years. They may be re-elected. However, the terms of office of one-half of the judges elected at the first election shall expire at the end of three years.

2 The judges whose terms of office are to expire at the end of the initial period of three years shall be chosen by lot by the Secretary General of the Council of Europe immediately after their election.

3 In order to ensure that, as far as possible, the terms of office of one-half of the judges are renewed every three years, the Parliamentary Assembly may decide, before proceeding to any subsequent election, that the term or terms of office of one or more judges to be elected shall be for a period other than six years but not more than nine and not less than three years.

4 In cases where more than one term of office is involved and where the Parliamentary Assembly applies the preceding paragraph, the allocation of the terms of office shall be effected by a drawing of lots by the Secretary General of the Council of Europe immediately after the election.

5 A judge elected to replace a judge whose term of office has not expired shall hold office for the remainder of his predecessoržs term.

6 The terms of office of judges shall expire when they reach the age of 70.

7 The judges shall hold office until replaced. They shall, however, continue to deal with such cases as they already have under consideration.

Article 24

DISMISSAL

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

Article 25

REGISTRY AND LEGAL SECRETARIES

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

Article 26

PLENARY COURT

The plenary Court shall

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

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

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

d) adopt the rules of the Court, and

e) elect the Registrar and one or more Deputy Registrars.

Article 27

COMMITTEES, CHAMBERS AND GRAND CHAMBER

1 To consider cases brought before it, the Court shall sit in committees of three judges, in Chambers

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

Article 28

DECLARATIONS OF INADMISSIBILITY BY COMMITTEES

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

Article 29

DECISIONS BY CHAMBERS ON ADMISSIBILITY AND MERITS

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

Article 30

RELINQUISHMENT OF JURISDICTION TO THE GRAND CHAMBER

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

Article 31

POWERS OF THE GRAND CHAMBER

The Grand Chamber shall
a) determine applications submitted either under Article 33 or Article 34 when a Chamber has

relinquished jurisdiction under Article 30 or when the case has been referred to it under Article 43; and

b) consider requests for advisory opinions submitted under Article 47.

Article 32

JURISDICTION OF THE COURT

1 The jurisdiction of the Court shall extend to all matters concerning the interpretation and application of the Convention and the protocols thereto which are referred to it as provided in Articles 33, 34 and 47.

2 In the event of dispute as to whether the Court has jurisdiction, the Court shall decide.

Article 33

INTER-STATE CASES

Any High Contracting Party may refer to the Court any alleged breach of the provisions of the Convention and the protocols thereto by another High Contracting Party.

Article 34

INDIVIDUAL APPLICATIONS

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

Article 35

ADMISSIBILITY CRITERIA

1 The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken.

2 The Court shall not deal with any application submitted under Article 34 that

a) is anonymous; or

b) is substantially the same as a matter that has already been examined by the Court or has already been submitted to another procedure of international investigation or settlement and contains no relevant new information.

3 The Court shall declare inadmissible any individual application submitted under Article 34 which it considers incompatible with the provisions of the Convention or the protocols thereto, manifestly ill-founded, or an abuse of the right of application.

4 The Court shall reject any application which it considers inadmissible under this Article. It may do so at any stage of the proceedings.

Article 36

THIRD PARTY INTERVENTION

1 In all cases before a Chamber of the Grand Chamber, a High Contracting Party one of whose nationals is an applicant shall have the right to submit written comments and to take part in hearings.

2 The President of the Court may, in the interest of the proper administration of justice, invite any High Contracting Party which is not a party to the proceedings or any person concerned who is not the applicant to submit written comments or take part in hearings.

Article 37

STRIKING OUT APPLICATIONS

1 The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that

a) the applicant does not intend to pursue his application; or

b) the matter has been resolved; or

c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.

However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the protocols thereto so requires.

2 The Court may decide to restore an application to its list of cases if it considers that the circumstances justify such a course.

Article 38

EXAMINATION OF THE CASE AND FRIENDLY SETTLEMENT PROCEEDINGS

1 If the Court declares the application admissible, it shall

a) pursue the examination of the case, together with the representatives of the parties, and if need be, undertake an investigation, for the effective conduct of which the States concerned shall furnish all necessary facilities;

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

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

Article 39

FINDING OF A FRIENDLY SETTLEMENT

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

Article 40

PUBLIC HEARINGS AND ACCESS TO DOCUMENTS

1 Hearings shall be in public unless the Court in exceptional circumstances decides otherwise.

2 Documents deposited with the Registrar shall be accessible to the public unless the President of the Court decides otherwise.

Article 41

JUST SATISFACTION

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

Article 42

JUDGMENTS OF CHAMBERS

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

Article 43

REFERRAL TO THE GRAND CHAMBER

1 Within a period of three months from the date of the judgment of the Chamber, any party to the case may, in exceptional cases, request that the case be referred to the Grand Chamber.

2 A panel of five judges of the Grand Chamber shall accept the request if the case raises a serious question affecting the interpretation or application of the Convention or the protocols thereto, or a serious issue of general importance.

3 If the panel accepts the request, the Grand Chamber shall decide the case by means of a judgment.

Article 44

FINAL JUDGMENTS

1 The judgment of the Grand Chamber shall be final.

2 The judgment of a Chamber shall become final

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

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

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

3 The final judgment shall be published.

Article 45

REASONS FOR JUDGMENTS AND DECISIONS

1 Reasons shall be given for judgments as well as for decisions declaring applications admissible or inadmissible.

2 If a judgment does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

Article 46

BINDING FORCE AND EXECUTION OF JUDGMENTS

1 The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2 The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.

Article 47

ADVISORY OPINIONS

1 The Court may, at the request of the Committee of Ministers, give advisory opinions on legal questions concerning the interpretation of the Convention and the protocols thereto.

2 Such opinions shall not deal with any question relating to the content or scope of the rights or freedoms defined in Section I of the Convention and the protocols thereto, or with any other question which the Court or the Committee of Ministers might have to consider in consequence of any such proceedings as could be instituted in accordance with the Convention.

3 Decisions of the Committee of Ministers to request an advisory opinion of the Court shall require a majority vote of the representatives entitled to sit on the Committee.

Article 48

ADVISORY JURISDICTION OF THE COURT

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

Article 49

REASONS FOR ADVISORY OPINIONS

1 Reasons shall be given for advisory opinions of the Court.

2 If the advisory opinion does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

3 Advisory opinions of the Court shall be communicated to the Committee of Ministers.

Article 50

EXPENDITURE ON THE COURT

The expenditure on the Court shall be borne by the Council of Europe.

Article 51

PRIVILEGES AND IMMUNITIES OF JUDGES

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

Section III1,2- *Miscellaneous provisions*

Article 52

INQUIRIES BY THE SECRETARY GENERAL

On receipt of a request from the Secretary General of the Council of Europe any High Contracting Party shall furnish an explanation of the manner in which its internal law ensures the effective implementation of any of the provisions of the Convention.

Article 53

SAFEGUARD FOR EXISTING HUMAN RIGHTS

Nothing in this Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any High Contracting Party or under any other agreement to which it is a Party.

Article 54

POWERS OF THE COMMITTEE OF MINISTERS

Nothing in this Convention shall prejudice the powers conferred on the Committee of Ministers by the Statute of the Council of Europe.

Article 55

EXCLUSION OF OTHER MEANS OF DISPUTE SETTLEMENT

The High Contracting Parties agree that, except by special agreement, they will not avail themselves of treaties, conventions or declarations in force between them for the purpose of submitting, by way of petition, a dispute arising out of the interpretation or application of this Convention to a means of settlement other than those provided for in this Convention.

Article 56

TERRITORIAL APPLICATION

13 Any State may at the time of its ratification or at any time thereafter declare by notification addressed to the Secretary General of the Council of Europe that the present Convention shall, subject to paragraph 4 of this Article, extend to all or any of the territories for whose international relations it is responsible.

2 The Convention shall extend to the territory or territories named in the notification as from the thirtieth day after the receipt of this notification by the Secretary General of the Council of Europe.

3 The provisions of this Convention shall be applied in such territories with due regard, however, to local requirements.

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

Article 57

RESERVATIONS

1 Any State may, when signing this Convention or when depositing its instrument of ratification, make a reservation in respect of any particular provision of the Convention to the extent that any law then in force in its territory is not in conformity with the provision. Reservations of a general character shall not be permitted under this article.

2 Any reservation made under this article shall contain a brief statement of the law concerned.

Article 58

DENUNCIATION

1 A High Contracting Party may denounce the present Convention only after the expiry of five years from the date on which it became a party to it and after six monthsž notice contained in a notification addressed to the Secretary General of the Council of Europe, who shall inform the other High Contracting Parties.

2 Such a denunciation shall not have the effect of releasing the High Contracting Party concerned from its obligations under this Convention in respect of any act which, being capable of constituting a violation of such obligations, may have been performed by it before the date at which the denunciation became effective.

3 Any High Contracting Party which shall cease to be a member of the Council of Europe shall cease to be a Party to this Convention under the same conditions.

41 The Convention may be denounced in accordance with the provisions of the preceding paragraphs in respect of any territory to which it has been declared to extend under the terms of Article 56.

Article 59

SIGNATURE AND RATIFICATION

1 This Convention shall be open to the signature of the members of the Council of Europe. It shall be ratified. Ratifications shall be deposited with the Secretary General of the Council of Europe.

2 The present Convention shall come into force after the deposit of ten instruments of ratification.

3 As regards any signatory ratifying subsequently, the Convention shall come into force at the date of the deposit of its instrument of ratification.

4 The Secretary General of the Council of Europe shall notify all the members of the Council of Europe of the entry into force of the Convention, the names of the High Contracting Parties who have ratified it, and the deposit of all instruments of ratification which may be effected subsequently.

Done at Rome this 4th-day of November-1950, in English and French, both texts being equally authentic, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General shall transmit certified copies to each of the signatories.

PROTOCOL

to the Convention for the Protection of Human Rights and Fundamental Freedooms3

Paris, 20.III.1952

The governments signatory hereto, being members of the Council of Europe,

Being resolved to take steps to ensure the collective enforcement of certain rights and freedoms other than those already included in Section I of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4th-November 1950 (hereinafter referred to as "the-Convention"),

Have agreed as follows:

Article 1

PROTECTION OF PROPERTY

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

Article 2

RIGHT TO EDUCATION

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

Article 3

RIGHT TO FREE ELECTIONS

The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

Article 4.1

TERRITORIAL APPLICATION

Any High Contracting Party may at the time of signature or ratification or at any time thereafter communicate to the Secretary General of the Council of Europe a declaration stating the extent to which it undertakes that the provisions of the present Protocol shall apply to such of the territories for the international relations of which it is responsible as are named therein.

Any High Contracting Party which has communicated a declaration in virtue of the preceding paragraph may from time to time communicate a further declaration modifying the terms of any former declaration or terminating the application of the provisions of this Protocol in respect of any territory.

A declaration made in accordance with this article shall be deemed to have been made in accordance with paragraph-1 of Article-56 of the Convention.

Article 5

RELATIONSHIP TO THE CONVENTION

As between the High Contracting Parties the provisions of Articles-1, 2, 3 and 4 of this Protocol shall be regarded as additional articles to the Convention and all the provisions of the Convention shall apply accordingly.

Article 6

SIGNATURE AND RATIFICATION

This Protocol shall be open for signature by the members of the Council of Europe, who are the signatories of the Convention; it shall be ratified at the same time as or after the ratification of the Convention. It shall enter into force after the deposit of ten instruments of ratification. As regards any signatory ratifying subsequently, the Protocol shall enter into force at the date of the deposit of its instrument of ratification.

The instruments of ratification shall be deposited with the Secretary General of the Council of Europe, who will notify all members of the names of those who have ratified.

Done at Paris on the 20th-day of March-1952, in English and French, both texts being equally authentic, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General shall transmit certified copies to each of the signatory governments.

PROTOCOL No. 4

to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already Included in the convention and in the First Protocol thereto1

Strasbourg, 16.IX.1963

The governments signatory hereto, being members of the Council of Europe,

Being resolved to take steps to ensure the collective enforcement of certain rights and freedoms other than those already included in Section 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4th November 1950 (hereinafter referred to as the "Convention") and in Articles 1 to 3 of the First Protocol to the Convention, signed at Paris on 20th March 1952,

Have agreed as follows:

Article 1

PROHIBITION OF IMPRISONMENT FOR DEBT

No one shall be deprived of his liberty merely on the ground of inability to fulfil a contractual obligation.

Article 2

FREEDOM OF MOVEMENT

1 Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2 Everyone shall be free to leave any country, including his own.

3 No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

4 The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.

Article 3

PROHIBITION OF EXPULSION OF NATIONALS

1 No one shall be expelled, by means either of an individual or of a collective measure, from the territory of the State of which he is a national.

2 No one shall be deprived of the right to enter the territory of the state of which he is a national.

Article 4

PROHIBITION OF COLLECTIVE EXPULSION OF ALIENS

Collective expulsion of aliens is prohibited.

Article 5

TERRITORIAL APPLICATION

1 Any High Contracting Party may, at the time of signature or ratification of this Protocol, or at any time thereafter, communicate to the Secretary General of the Council of Europe a declaration stating the extent to which it undertakes that the provisions of this Protocol shall apply to such of the territories for the international relations of which it is responsible as are named therein.

2 Any High Contracting Party which has communicated a declaration in virtue of the preceding paragraph may, from time to time, communicate a further declaration modifying the terms of any former declaration or terminating the application of the provisions of this Protocol in respect of any territory.

317 A declaration made in accordance with this article shall be deemed to have been made in accordance with paragraph 1 of Article 56 of the Convention.

4 The territory of any State to which this Protocol applies by virtue of ratification or acceptance by that State, and each territory to which this Protocol is applied by virtue of a declaration by that State under this article, shall be treated as separate territories for the purpose of the references in Articles 2 and 3 to the territory of a State.

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

Article 6.2

RELATIONSHIP TO THE CONVENTION

As between the High Contracting Parties the provisions of Articles 1 to 5 of this Protocol shall be regarded as additional Articles to the Convention, and all the provisions of the Convention shall apply accordingly.

Article 7

SIGNATURE AND RATIFICATION

1 This Protocol shall be open for signature by the members of the Council of Europe who are the signatories of the Convention; it shall be ratified at the same time as or after the ratification of the Convention. It shall enter into force after the deposit of five instruments of ratification. As regards any signatory ratifying subsequently, the Protocol shall enter into force at the date of the deposit of its instrument of ratification.

2 The instruments of ratification shall be deposited with the Secretary General of the Council of

Europe, who will notify all members of the names of those who have ratified.

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

Done at Strasbourg, this 16th day of September 1963, in English and in French, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General shall transmit certified copies to each of the signatory states.

PROTOCOL No. 6

to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty

Strasbourg, 28. IV. 1983

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

Considering that the evolution that has occurred in several member States of the Council of Europe expresses a general tendency in favour of abolition of the death penalty;

Have agreed as follows:

Article 1

ABOLITION OF THE DEATH PENALTY

The death penalty shall be abolished. No-one shall be condemned to such penalty or executed.

Article 2

DEATH PENALTY IN TIME OF WAR

A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions. The State shall communicate to the Secretary General of the Council of Europe the relevant provisions of that law.

Article 3

PROHIBITION OF DEROGATIONS

No derogation from the provisions of this Protocol shall be made under Article 15 of the Convention.

Article 42

PROHIBITION OF RESERVATIONS

No reservation may be made under Article 57 of the Convention in respect of the provisions of this Protocol.

Article 5

TERRITORIAL APPLICATION

1 Any State may at the time of signature or when depositing its instrument of ratification, acceptance

or approval, specify the territory or territories to which this Protocol shall apply.

2 Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the date of receipt of such declaration by the Secretary General.

3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the date of receipt of such notification by the Secretary General.

Article 6

RELATIONSHIP TO THE CONVENTION

As between the States Parties the provisions of Articles 1 to 5 of this Protocol shall be regarded as additional articles to the Convention and all the provisions of the Convention shall apply accordingly.

Article 7

SIGNATURE AND RATIFICATION

The Protocol shall be open for signature by the member States of the Council of Europe, signatories to the Convention. It shall be subject to ratification, acceptance or approval. A member State of the Council of Europe may not ratify, accept or approve this Protocol unless it has, simultaneously or previously, ratified the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 8

ENTRY INTO FORCE

1 This Protocol shall enter into force on the first day of the month following the date on which five member States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 7.

2 In respect of any member State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the date of the deposit of the instrument of ratification, acceptance or approval.

Article 9

DEPOSITARY FUNCTIONS

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

a) any signature;

b) the deposit of any instrument of ratification, acceptance or approval;

c) any date of entry into force of this Protocol in accordance with Articles 5 and 8;

d) any other act, notification or communication relating to this Protocol.

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

Done at Strasbourg, this 28th day of April 1983, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.

PROTOCOL No. 7

to the Convention for the Protection of Human Rights and Fundamental Freedoms1

Strasbourg, 22.XI.1984

The member States of the Council of Europe signatory hereto,

Being resolved to take further steps to ensure the collective enforcement of certain rights and freedoms by means of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention"),

Have agreed as follows :

Article 1

PROCEDURAL SAFEGUARDS RELATING TO EXPULSION OF ALIENS

1 An alien lawfully resident in the territory of a State shall not be expelled therefrom except in pursuance of a decision reached in accordance with law and shall be allowed:

a) to submit reasons against his expulsion,

b) to have his case reviewed, and

c) to be represented for these purposes before the competent authority or a person or persons designated by that authority.

2 An alien may be expelled before the exercise of his rights under paragraph 1.a, b and c of this Article, when such expulsion is necessary in the interests of public order or is grounded on reasons of national security.

Article 2

RIGHT OF APPEAL IN CRIMINAL MATTERS

1 Everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal. The exercise of this right, including the grounds on which it may be exercised, shall be governed by law.

2 This right may be subject to exceptions in regard to offences of a minor character, as prescribed by law, or in cases in which the person concerned was tried in the first instance by the highest tribunal or was convicted following an appeal against acquittal.

Article 3

COMPENSATION FOR WRONGFUL CONVICTION

When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed, or he has been pardoned, on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to the law or the practice of the State concerned, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

Article 4

RIGHT NOT TO BE TRIED OR PUNISHED TWICE

1 No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.

2 The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.

3 No derogation from this Article shall be made under Article 15 of the Convention.

Article 5

EQUALITY BETWEEN SPOUSES

Spouses shall enjoy equality of rights and responsibilities of a private law character between them, and in their relations with their children, as to marriage, during marriage and in the event of its dissolution. This Article shall not prevent States from taking such measures as are necessary in the interests of the children.

Article 6

TERRITORIAL APPLICATION

1 Any State may at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which the Protocol shall apply and state the extent to which it undertakes that the provisions of this Protocol shall apply to such territory or territories.

2 Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the expiration of a period of two months after the date of receipt by the Secretary General of such declaration.

3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn or modified by a notification addressed to the Secretary General.

The withdrawal or modification shall become effective on the first day of the month following the expiration of a period of two months after the date of receipt of such notification by the Secretary General.

41 A declaration made in accordance with this Article shall be deemed to have been made in accordance with paragraph 1 of Article 56 of the Convention.

5 The territory of any State to which this Protocol applies by virtue of ratification, acceptance or approval by that State, and each territory to which this Protocol is applied by virtue of a declaration by that State under this Article, may be treated as separate territories for the purpose of the reference in Article 1 to the territory of a State.

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

Article 7

RELATIONSHIP TO THE CONVENTION

As between the States Parties, the provisions of Article 1 to 6 of this Protocol shall be regarded as additional Articles to the Convention, and all the provisions of the Convention shall apply accordingly.

Article 8

SIGNATURE AND RATIFICATION

This Protocol shall be open for signature by member States of the Council of Europe which have signed the Convention. It is subject to ratification, acceptance or approval. A member State of the Council of Europe may not ratify, accept or approve this Protocol without previously or simultaneously ratifying the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 9

ENTRY INTO FORCE

1 This Protocol shall enter into force on the first day of the month following the expiration of a period of two months after the date on which seven member States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 8.

2 In respect of any member State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the expiration of a period of two months after the date of the deposit of the instrument of ratification, acceptance or approval.

Article 10

DEPOSITARY FUNCTIONS

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

a) any signature;

b) the deposit of any instrument of ratification, acceptance or approval;

c) any date of entry into force of this Protocol in accordance with Articles 6 and 9;

d) any other act, notification or declaration relating to this Protocol.

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

Done at Strasbourg, this 22nd day of November 1984, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.

KONVENCIJA ZA ZAŠTITU LJUDSKIH PRAVA I TEMELJNIH SLOBODA

Rim, 4. studenoga 1950.

Vlade potpisnice, članice Vijeća Europe, uzimajući u obzir Opću deklaraciju o ljudskim pravima koju je Opća skupština Ujedinjenih naroda proglasila 10. prosinca 1948;

uzimajući u obzir da ta Deklaracija nastoji osigurati opće i djelotvorno priznanje i poštovanje u njoj proglašenih prava;

uzimajući u obzir da je cilj Vijeća Europe postizanje većeg jedinstva njegovih članica i da je jedan od načina postizanja toga cilja očuvanje i daljnje ostvarivanje ljudskih prava i temeljnih sloboda;

potvrđujući svoju duboku privrženost tim temeljnim slobodama koje su osnova pravde i mira u svijetu i koje su najbolje zaštićene istinskom političkom demokracijom, s jedne strane, te zajedničkim razumijevanjem i poštovanjem ljudskih prava o kojima te slobode ovise, s druge strane;

odlučne, kao vlade europskih država koje su vođene istinskim duhom političkih ideala i tradicije poštovanja slobode i vladavine prava, koji su njihova zajednička baština, poduzeti početne korake da bi zajednički osigurale ostvarenje određenih prava utvrđenih Općom deklaracijom;

sporazumjele su se kako slijedi:

Članak 1.1

OBVEZA NA POŠTOVANJE LJUDSKIH PRAVA

Visoke ugovorne stranke osigurat će svakoj osobi pod svojom jurisdikcijom prava i slobode određene u odjeljku I. ove Konvencije.

ODJELJAK I1 - *Prava i slobode*

Članak 2.1

PRAVO NA ŽIVOT

1. Pravo svakoga na život zaštićeno je zakonom. Nitko ne smije biti namjerno lišen života osim u izvršenju sudske presude na smrtnu kaznu za kaznena djela za koje je ta kazna predviđena zakonom.

2. Nije u suprotnosti s odredbama ovoga članka lišenje života proizašlo iz upotrebe sile koja je bila nužno potrebna:

a) pri obrani bilo koje osobe od protupravnog nasilja;

b) pri zakonitom uhićenju ili pri spriječavanju bijega osobe zakonito lišene slobode;

c) radi suzbijanja pobune ili ustanka u skladu sa zakonom.

Članak 3.1

ZABRANA MUČENJA

Nitko se ne smije podvrgnuti mučenju ni nečovječnom ili ponižavajućem postupanju ili kazni.

Članak 4.1

ZABRANA ROPSTVA I PRISILNOG RADA

1. Nitko se ne smije držati u ropstvu ili ropstvu sličnom odnosu.

2. Nitko se ne smije siliti na prisilan ili obvezatan rad.

3. U svrhu tumačenja ovoga članka pojam "prisilni ili obvezatni rad" ne obuhvaća:

a) svaki rad koji se u skladu s člankom 5. ove Konvencije zahtijeva od neke osobe na redovitom izdržavanju kazne ili za vrijeme uvjetnog otpusta na slobodu;

b) svaku vojnu službu ili, u zemljama gdje se dopušta odbijanje obnašanja vojne službe zbog prigovora savjesti, drugu službu određenu umjesto obvezatne vojne službe;

c) svaku službu koja se traži u slučaju nepogode ili nesreće koje ugrožavaju život i blagostanje zajednice;

d) svaki rad ili službu koji su dio uobičajenih građanskih obveza.

Članak 5.1

PRAVO NA SLOBODU I SIGURNOST

1. Svatko ima pravo na slobodu i na osobnu sigurnost. Nitko se ne smije lišiti slobode, osim u sljedećim slučajevima i u postupku propisanom zakonom:

a) ako je zatvoren u skladu sa zakonom nakon presude nadležnog suda;

b) ako je zakonito uhićen ili pritvoren zbog nepoštovanja zakonitog sudskog naloga radi osiguranja izvršenja neke zakonom propisane obveze;

c) ako je zakonito uhićen ili pritvoren radi dovođenja nadležnoj sudbenoj vlasti kad postoji osnovana sumnja da je počinio kazneno djelo ili kad je razumno vjerovati da je to nužno radi spriječavanja izvršenja kaznenog djela ili bijega nakon njegova počinjenja;

d) ako se radi o zakonitom zatvaranju maloljetnika radi izricanja odgojne mjere nadzora ili o njegovu zakonitom pritvoru radi dovođenja nadležnoj sudbenoj vlasti;

e) ako se radi o zakonitom lišenju slobode osoba radi spriječavanja širenja zaraznih bolesti, o pritvaranju umobolnika, alkoholičara, ovisnika o drogi ili skitnica;

f) ako se radi o zakonitom uhićenju ili pritvoru neke osobe kako bi je se spriječilo da neovlašteno uđe u zemlju ili osobe protiv koje je u tijeku postupak protjerivanja ili izručenja.

2. Svatko tko je uhićen mora u najkraćem roku biti obaviješten, na jeziku koji razumije, o razlozima toga uhićenja i o svakoj optužbi protiv sebe.

3. Svatko uhićen ili pritvoren u uvjetima predviđenim stavkom 1.c) ovoga članka mora se u najkraćem roku izvesti pred suca, ili pred drugo zakonom određeno tijelo sudbene vlasti, i ima pravo u razumnom roku biti suđen ili pušten na slobodu do suđenja. Puštanje na slobodu može se uvjetovati davanjem jamstva da će ta osoba pristupiti suđenju.

4. Svatko tko je lišen slobode uhićenjem ili pritvaranjem ima pravo pokrenuti sudski postupak u kojem će se brzo odlučiti o zakonitosti njegova pritvaranja ili o njegovu puštanju na slobodu ako je pritvaranje bilo nezakonito.
5. Svatko tko je žrtva uhićenja ili pritvaranja suprotno odredbama ovoga članka ima izvršivo pravo na odštetu.

Članak 6.1

PRAVO NA POŠTENO SUĐENJE

1. Radi utvrđivanja svojih prava i obveza građanske naravi ili u slučaju podizanja optužnice za kazneno djelo protiv njega svatko ima pravo da zakonom ustanovljeni neovisni i nepristrani sud pravično, javno i u razumnom roku ispita njegov slučaj. Presuda se mora izreći javno, ali se sredstva priopćavanja i javnost mogu isključiti iz cijele rasprave ili njezinog dijela zbog razloga koji su nužni u demokratskom društvu radi interesa morala, javnog reda ili državne sigurnosti, kad interesi maloljetnika ili privatnog života stranaka to traže, ili u opsegu koji je po mišljenju suda bezuvjetno potreban u posebnim okolnostima gdje bi javnost mogla biti štetna za interes pravde.
2. Svatko optužen za kazneno djelo smatrat će se nevinim sve dok mu se ne dokaže krivnja u skladu sa zakonom.
3. Svatko optužen za kazneno djelo ima najmanje sljedeća prava:
a) da u najkraćem roku bude obaviješten, potanko i na jeziku koji razumije, o prirodi i razlozima optužbe koja se podiže protiv njega;
b) da ima odgovarajuće vrijeme i mogućnost za pripremu svoje obrane;
c) da se brani sam ili uz branitelja po vlastitom izboru, a ako nema dovoljno sredstava platiti branitelja, ima pravo na besplatnog branitelja, kad to nalažu interesi pravde;
d) da ispituje ili dade ispitati svjedoke optužbe i da se osigura prisustvo i ispitivanje svjedoka obrane pod istim uvjetima kao i svjedoka optužbe;
e) besplatnu pomoć tumača ako ne razumije ili ne govori jezik koji se upotrebljava u sudu.

Članak 7.1

NEMA KAZNE BEZ ZAKONA

1. Nitko ne može biti proglašen krivim za kazneno djelo počinjeno činom ili propustom koji, u času počinjenja, po unutarnjem ili po međunarodnom pravu nisu bili predviđeni kao kazneno djelo. Isto se tako ne može odrediti teža kazna od one koja je bila primjenjiva u času kad je kazneno djelo počinjeno.
2. Ovaj članak ne priječi suđenje ili kažnjavanje bilo koje osobe za neki čin ili propust koji je u času počinjenja predstavljao kazneno djelo u skladu s općim načelima prava priznatim od civiliziranih naroda.

Članak 8.1

PRAVO NA POŠTOVANJE PRIVATNOG I OBITELJSKOG ŽIVOTA

1. Svatko ima pravo na poštovanje svoga privatnog i obiteljskog života, doma i dopisivanja.

2. Javna vlast se neće miješati u ostvarivanje tog prava, osim u skladu sa zakonom i ako je u demokratskom društvu nužno radi interesa državne sigurnosti, javnog reda i mira, ili gospodarske dobrobiti zemlje, te radi spriječavanja nereda ili zločina, radi zaštite zdravlja ili morala ili radi zaštite prava i sloboda drugih.

Članak 9.1

SLOBODA MIŠLJENJA, SAVJESTI I VJEROISPOVIJEDI

1. Svatko ima pravo na slobodu mišljenja, savjesti i vjeroispovijedi; to pravo uključuje slobodu da se promijeni vjeroispovijed ili uvjerenje i slobodu da se pojedinačno ili u zajednici s drugima, javno ili privatno, iskazuje svoju vjeroispovijed ili uvjerenje bogoslužjem, poučavanjem, praktičnim vršenjem i obredima.

2. Sloboda iskazivanja vjeroispovijedi ili uvjerenja podvrgnut će se samo takvim ograničenjima koja su propisana zakonom i koja su u demokratskom društvu nužna radi interesa javnog reda i mira, zaštite javnog reda, zdravlja ili morala ili radi zaštite prava i sloboda drugih.

Članak 10.1

SLOBODA IZRAŽAVANJA

1. Svatko ima pravo na slobodu izražavanja. To pravo obuhvaća slobodu mišljenja i slobodu primanja i širenja informacija i ideja bez miješanja javne vlasti i bez obzira na granice. Ovaj članak ne sprječava države da podvrgnu režimu dozvola ustanove koje obavljaju djelatnosti radija ili televizije te kinematografsku djelatnost.

2. Kako ostvarivanje tih sloboda obuhvaća dužnosti i odgovornosti, ono može biti podvrgnuto formalnostima, uvjetima, ograničenjima ili kaznama propisanim zakonom, koji su u demokratskom društvu nužni radi interesa državne sigurnosti, teritorijalne cjelovitosti ili javnog reda i mira, radi spriječavanja nereda ili zločina, radi zaštite zdravlja ili morala, radi zaštite ugleda ili prava drugih, radi spriječavanja odavanja povjerljivih informacija ili radi očuvanja autoriteta i nepristranosti sudbene vlasti.

Članak 11.1

SLOBODA OKUPLJANJA I UDRUŽIVANJA

1. Svatko ima pravo na slobodu mirnog okupljanja i slobodu udruživanja s drugima, uključujući pravo osnivati sindikate ili im pristupati radi zaštite svojih interesa.

2. Ne mogu se postavljati nikakva ograničenja ostvarivanju tih prava, osim onih koja su propisana zakonom i koja su u demokratskom društvu nužna radi interesa državne sigurnosti ili javnog reda i mira, radi spriječavanja nereda ili zločina, radi zaštite zdravlja ili morala ili radi zaštite prava i sloboda drugih. Ovaj članak ne zabranjuje da se nameću zakonska ograničenja u ostvarivanju tih prava

pripadnicima oružanih snaga, policije ili državne uprave.

Članak 12.1

PRAVO NA BRAK

Muškarci i žene u dobi za sklapanje braka imaju pravo stupiti u brak i osnovati obitelj, u skladu s domaćim zakonima koji uređuju ostvarenje tog prava.

Članak 13.1

PRAVO NA DJELOTVORAN PRAVNI LIJEK

Svatko čija su prava i slobode koje su priznate u ovoj Konvenciji povrijeđene ima pravo na djelotvorna pravna sredstva pred domaćim državnim tijelom čak i u slučaju kad su povredu počinile osobe koje su djelovale u službenom svojstvu.

Članak 14.1

ZABRANA DISKRIMINACIJE

Uživanje prava i sloboda koje su priznate u ovoj Konvenciji osigurat će se bez diskriminacije na bilo kojoj osnovi, kao što je spol, rasa, boja kože, jezik, vjeroispovijed, političko ili drugo mišljenje, nacionalno ili društveno podrijetlo, pripadnost nacionalnoj manjini, imovina, rođenje ili druga okolnost.

Članak 15.1

DEROGIRANJE U VRIJEME IZVANREDNOG STANJA

1. U vrijeme rata ili drugog izvanrednog stanja koje ugrožava opstanak naroda svaka visoka ugovorna stranka može, u opsegu koji je strogo određen potrebama tih izvanrednih prilika, poduzeti mjere koje derogiraju njezine obveze iz ove Konvencije, uz uvjet da te mjere nisu nespojive s njezinim ostalim obvezama po međunarodnom pravu.

2. Na temelju te odredbe ne može se derogirati članak 2, osim za slučajeve smrti prouzročene zakonitim ratnim činima, niti članci 3, 4. (stavak 1) i 7.

3. Svaka visoka ugovorna stranka koja se posluži tim pravom derogiranja svojih obveza mora glavnog tajnika Vijeća Europe u cijelosti obavijestiti o mjerama koje je poduzela i o razlozima radi kojih je to učinila. Ona će također obavijestiti glavnog tajnika Vijeća Europe o prestanku djelovanja tih mjera i o ponovnoj punoj primjeni svih odredaba ove Konvencije.

Članak 16.1

OGRANIČENJA POLITIČKE DJELATNOSTI STRANACA

Ništa u člancima 10, 11. i 14. neće se smatrati kao da sprječava visoke ugovorne stranke u nametanju ograničenja političkoj djelatnosti stranaca.

Članak 17.1

ZABRANA ZLOUPOTREBE PRAVA

Ništa se u ovoj Konvenciji ne može tumačiti kao da uključuje za bilo koju državu, skupinu ili pojedinca neko pravo da se upusti u neku djelatnost ili da izvrši neki čin koji bi smjerali na uništenje prava ili sloboda priznatih u ovoj Konvenciji ili na njihovo ograničenje u većoj mjeri nego što se u njoj predviđa.

Članak 18.1

GRANICE PRIMJENE OGRANIČENJA PRAVA

Ograničenja prava i sloboda dopuštena ovom Konvencijom neće se primjenjivati u druge svrhe osim onih za koje su propisana.

ODJELJAK II. 2 - *Europski sud za ljudska prava*

Članak 19.

USTANOVLJENJE SUDA

Radi osiguranja poštovanja obveza koje su visoke ugovorne stranke preuzele Konvencijom i dodatnim protokolima, ustanovljuje se Europski sud za ljudska prava, dalje: "Sud". On djeluje kao stalni Sud.

Članak 20.

BROJ SUDACA

Sud se sastoji od broja sudaca jednakog broju visokih ugovornih stranaka.

Članak 21.

UVJETI ZA OBAVLJANJE SLUŽBE

1. Suci moraju biti visokog moralnog ugleda i ispunjavati uvjete što se traže za obavljanje visokih sudačkih služba, ili pravnici priznati kao ugledni stručnjaci.
2. Suci djeluju u Sudu u osobnom svojstvu.
3. Tijekom svoga mandata suci ne mogu obavljati nikakve djelatnosti koje bi bile inkompatibilne s njihovom neovisnosti, nepristranosti ili sa zahtjevom punog radnog vremena njihove službe; o svim pitanjima koja proizađu iz primjene ovoga stavka odlučuje Sud.

Članak 22.

IZBOR SUDACA

1. Suce u ime svake visoke ugovorne stranke bira Parlamentarna skupština većinom glasova, s liste od tri kandidata koje predlaže visoka ugovorna stranka.
2. Isti se postupak primjenjuje pri popunjavanju Suda u slučaju pristupa novih visokih ugovornih stranaka i pri popunjavanju ispražnjenih mjesta.

Članak 23.

TRAJANJE MANDATA

1. Suci se biraju na razdoblje od šest godina. Oni se mogu ponovno birati. Međutim, mandat polovice sudaca izabranih na prvom izboru istječe na kraju treće godine.

2. Suci čiji mandat istječe krajem početnog razdoblja od tri godine određuju se ždrijebom što ga vuče glavni tajnik Vijeća Europe neposredno nakon njihova izbora.

3. Da bi se, koliko je to moguće, osiguralo obnavljanje mandata polovice sudaca svake tri godine, Parlamentarna skupština može prije pristupanja svakom sljedećem izboru odlučiti da mandat jednog suca ili mandati više sudaca koji se imaju izabrati ne traje šest godina, ali da ne bude duži od devet ni kraći od tri godine.

4. U slučajevima kad se radi o više od jednoga mandata, a Parlamentarna skupština primjenjuje prethodni stavak, mandati će se rasporediti ždrijebom što ga vuče glavni tajnik Vijeća Europe neposredno nakon izbora.

5. Sudac izabran na mjesto suca kojemu mandat još nije istekao završava razdoblje mandata svog prethodnika.

6. Mandat sudaca istječe kad navrše 70 godina.

7. Suci ostaju na dužnosti dok ne budu zamijenjeni. Međutim, oni nastavljaju rješavanje slučajeva što su ih bili započeli.

Članak 24.

RAZRJEŠENJE SUDACA

Sudac ne može biti razriješen svoje službe osim ako ostali suci dvotrećinskom većinom odluče da je on prestao ispunjavati tražene uvjete.

Članak 25.

TAJNIŠTVO I PRAVNI SURADNICI

Sud ima Tajništvo čije se funkcije i organizacija propisuju poslovnikom Suda. Sudu u radu pomažu pravni suradnici.

Članak 26.

PLENARNA SJEDNICA

Sud u plenarnoj sjednici:

a) bira svoga predsjednika i jednog ili dva potpredsjednika na razdoblje od tri godine; oni se mogu ponovno birati;

b) osniva vijeća za određeno razdoblje;

c) bira predsjednike sudskih vijeća; oni se mogu ponovno birati;

d) usvaja poslovnik Suda, i

e) bira tajnika i jednog ili više zamjenika tajnika.

Članak 27.

ODBORI, VIJEĆA I VELIKO VIJEĆE

1. Sud razmatra slučajeve koji su mu podneseni u odborima od tri suca, u vijećima od sedam sudaca i u velikom vijeću od sedamnaest sudaca. Sudska vijeća osnivaju odbore za određeno razdoblje.
2. U vijeće i veliko vijeće ulazi, po službenoj dužnosti, sudac koji je izabran u ime zainteresirane stranke ili, ako takvoga nema ili je spriječen, u svojstvu suca, osoba koju ta država izabere.
3. Veliko vijeće uključuje i predsjednika suda, potpredsjednike, predsjednike vijeća i ostale suce izabrane u skladu s poslovnikom Suda. Kad veliko vijeće razmatra neki slučaj na temelju članka 43, niti jedan sudac iz vijeća koje je donijelo presudu ne može sudjelovati u radu velikog vijeća, s izuzetkom predsjednika vijeća i suca izabranog u ime države stranke o kojoj se radi.

Članak 28.

PROGLAŠAVANJE ZAHTJEVA NEDOPUŠTENIM OD STRANE ODBORA

Odbor može jednoglasnom odlukom proglasiti nedopuštenim ili brisati s liste slučajeva pojedinačni zahtjev podnesen na temelju članka 34. kad takvu odluku može donijeti bez daljnjeg razmatranja. Odluka je konačna.

Članak 29.

ODLUKE VIJEĆA O DOPUŠTENOSTI I OSNOVANOSTI

1. Ako nije donesena odluka na temelju članka 28, vijeće odlučuje o dopuštenosti i osnovanosti pojedinačnih zahtjeva podnesenih na temelju članka 34.
2. Vijeće odlučuje o dopuštenosti i osnovanosti međudržavnih zahtjeva podnesenih na temelju članka 33.
3. Odluka o dopuštenosti donosi se odvojeno, osim ako Sud, u iznimnim slučajevima, odluči drukčije.

Članak 30.

USTUPANJE NADLEŽNOSTI VELIKOM VIJEĆU

Ako se pri razmatranju slučaja pred vijećem pojavi neko važno pitanje koje utječe na tumačenje Konvencije ili dodatnih protokola, ili ako rješenje nekog pitanja pred vijećem može dovesti do rezultata koji je nespojiv s prije donesenom presudom Suda, vijeće može, u bilo kojem času prije donošenja presude, ustupiti nadležnost velikom vijeću, osim ako jedna od stranaka spora tome prigovori.

Članak 31.

OVLASTI VELIKOG VIJEĆA

Veliko vijeće:
a) odlučuje o zahtjevima podnesenima na temelju članka 33. ili članka 34. kad je vijeće prepustilo

nadležnost prema članku 30, ili kad mu je slučaj podnesen na temelju članka 43, te
b) razmatra zahtjeve za savjetodavnim mišljenjima podnesene na temelju članka 47.

Članak 32.
NADLEŽNOST SUDA

1. Nadležnost Suda proteže se na sve predmete glede tumačenja i primjene Konvencije i dodatnih protokola što su mu podneseni kao što je određeno u člancima 33, 34. i 47.
2. U slučaju spora o nadležnosti Suda odlučuje Sud.

Članak 33.
MEĐUDRŽAVNI SPOROVI

Svaka visoka ugovorna stranka može se obratiti Sudu povodom svake navodne povrede odredaba Konvencije i dodatnih protokola od strane druge visoke ugovorne stranke.

Članak 34.
POJEDINAČNI ZAHTJEVI

Sud može primati zahtjeve bilo koje fizičke osobe, nevladine organizacije ili skupine pojedinaca koji tvrde da su žrtve povrede prava priznatih u ovoj Konvenciji ili dodatnim protokolima što ih je počinila jedna visoka ugovorna stranka. Visoke ugovorne stranke obvezuju se da ni na koji način neće sprječavati djelotvorno vršenje toga prava.

Članak 35.
UVJETI DOPUŠTENOSTI

1. Sud može razmatrati predmet samo nakon što su iscrpljena sva raspoloživa domaća pravna sredstva, u skladu s općeprihvaćenim pravilima međunarodnog prava i unutar razdoblja od šest mjeseci od dana donošenja konačne odluke.
2. Sud neće razmatrati niti jedan pojedinačni zahtjev podnesen na temelju članka 34. koji je:
a) anoniman; ili
b) u osnovi isti kao neki predmet što ga je Sud već ispitivao, ili koji je već podvrgnut nekom drugom međunarodnom postupku istrage ili rješavanja te ako ne sadrži nikakve nove relevantne činjenice.
3. Sud će proglasiti nedopuštenim svaki pojedinačni zahtjev podnesen na temelju članka 34. koji smatra inkompatibilnim s odredbama Konvencije i dodatnih protokola, očito neosnovanim ili zloupotrebom prava na podnošenje zahtjeva.
4. Sud će odbaciti svaki zahtjev koji smatra nedopuštenim na temelju ovoga članka. Takva odluka može biti donesena u bilo kojem stadiju postupka.

Članak 36.
INTERVENCIJA TREĆE STRANKE

1. U svim slučajevima koji se razmatraju pred vijećem ili velikim vijećem visoka ugovorna stranka čiji je državljanin podnositelj zahtjeva ima pravo podnositi pisana očitovanja i sudjelovati u raspravi.
2. Predsjednik Suda može, u interesu pravilnog suđenja, pozvati svaku visoku ugovornu stranku koja nije stranka u postupku ili svaku zainteresiranu osobu koja nije podnositelj zahtjeva da podnesu pisana očitovanja ili da sudjeluju u raspravi.

Članak 37.

BRISANJE ZAHTJEVA S LISTE

1. Sud može u svakom stadiju postupka odlučiti da izbriše neki zahtjev s liste slučajeva kad okolnosti dovode do zaključka:
a) da podnositelj ne namjerava ustrajati u svojem zahtjevu, ili
b) da je predmet riješen, ili
c) da iz nekog drugog razloga koji utvrdi Sud više nije opravdano nastaviti s daljnjim ispitivanjem zahtjeva.
Međutim, Sud će nastaviti ispitivanje zahtjeva ako to traže interesi poštovanja ljudskih prava zajamčenih Konvencijom i dodatnim protokolima.
2. Sud može odlučiti da vrati zahtjev na svoju listu slučajeva ako smatra da to okolnosti opravdavaju.

Članak 38.

RAZMATRANJE SLUČAJA I POSTUPAK POSTIZANJA PRIJATELJSKOG RJEŠENJA

1. Ako Sud zahtjev proglasi dopuštenim, on će:
a) nastaviti s ispitivanjem slučaja, zajedno s predstavnicima stranaka, i ako bude potrebno, provesti istragu za čije će djelotvorno provođenje zainteresirane države pružiti svu potrebnu suradnju;
b) staviti se na raspolaganje zainteresiranim strankama kako bi se postiglo prijateljsko rješenje predmeta na temelju poštovanja ljudskih prava kako ih priznaju Konvencija i dodatni protokoli.
2. Postupci prema stavku 1.b) povjerljive su prirode.

Članak 39.

POSTIZANJE PRIJATELJSKOG RJEŠENJA

Ako je postignuto prijateljsko rješenje, Sud će izbrisati slučaj sa svoje liste odlukom koja će sadržavati kratku izjavu o činjenicama i postignutom rješenju.

Članak 40.

JAVNOST RASPRAVA I PRISTUP DOKUMENTIMA

1. Rasprave su javne, osim kad Sud u iznimnim slučajevima drukčije odluči.
2. Dokumenti položeni kod tajnika dostupni su javnosti, osim kad predsjednik Suda drukčije odluči.

Članak 41.

PRAVEDNA NAKNADA

Ako Sud utvrdi da je došlo do povrede Konvencije i dodatnih protokola, a unutarnje pravo zainteresirane visoke ugovorne stranke omogućava samo djelomičnu odštetu, Sud će, prema potrebi, dodijeliti pravednu naknadu povrijeđenoj stranci.

Članak 42.

PRESUDE VIJEĆA

Presude vijeća postaju konačne u skladu s odredbama članka 44, stavak 2.

Članak 43.

PODNOŠENJE VELIKOM VIJEĆU

1. U razdoblju od tri mjeseca nakon dana donošenja presude vijeća, svaka stranka spora može, u iznimnim slučajevima, zahtijevati podnošenje slučaja velikom vijeću.
2. Odbor od pet sudaca velikog vijeća prihvatit će zahtjev ako slučaj postavlja neko važno pitanje koje utječe na tumačenje ili primjenu Konvencije ili dodatnih protokola ili neki ozbiljan problem općeg značenja.
3. Ako odbor prihvati zahtjev, veliko će vijeće riješiti slučaj presudom.

Članak 44.

KONAČNE PRESUDE

1. Presuda velikog vijeća je konačna.
2. Presuda vijeća je konačna:
a) kad stranke izjave da neće uložiti zahtjev za podnošenje slučaja velikom vijeću; ili
b) tri mjeseca nakon dana donošenja presude, ako nije uložen zahtjev za podnošenje slučaja velikom vijeću; ili
c) kad odbor velikoga vijeća odbije zahtjev o podnošenju na temelju članka 43.
3. Konačna se presuda objavljuje.

Članak 45.

OBRAZLOŽENJE PRESUDA I ODLUKA

1. Presude i odluke o proglašenju zahtjeva dopuštenim ili nedopuštenim trebaju biti obrazložene.
2. Ako presuda u cijelosti ili djelomično ne izražava jednoglasno mišljenje sudaca, svaki sudac ima pravo da dade posebno mišljenje.

Članak 46.

OBVEZATNA SNAGA I IZVRŠENJE PRESUDA

1. Visoke se ugovorne stranke obvezuju da će se podvrgnuti konačnoj presudi Suda u svakom sporu u kojem su stranke.
2. Konačna presuda Suda dostavlja se Odboru ministara, koji nadzire njezino izvršenje.

Članak 47.

SAVJETODAVNA MIŠLJENJA

1. Sud može, na zahtjev Odbora ministara, davati savjetodavna mišljenja o pravnim pitanjima glede tumačenja Konvencije i dodatnih protokola.
2. Takva se mišljenja ne smiju odnositi na pitanja vezana uz sadržaj ili domašaj prava i sloboda određenih u odjeljku I. Konvencije i dodatnim protokolima, ili na bilo koje drugo pitanje koje bi Sud ili Odbor ministara mogli razmatrati na temelju nekog postupka koji je započeo u skladu s Konvencijom.
3. Odluke Odbora ministara da od Suda traži neko savjetodavno mišljenje donose se većinom glasova predstavnika koji imaju pravo djelovati u Odboru.

Članak 48.

SAVJETODAVNA NADLEŽNOST SUDA

Sud odlučuje je li zahtjev za savjetodavnim mišljenjem koji je podnio Odbor ministara unutar njegove nadležnosti kako je određuje članak 47.

Članak 49.

OBRAZLOŽENJE SAVJETODAVNIH MIŠLJENJA

1. Savjetodavna mišljenja Suda trebaju biti obrazložena.
2. Ako savjetodavno mišljenje u cijelosti ili djelomično ne izražava jednoglasno mišljenje sudaca, svaki sudac ima pravo da dade posebno mišljenje.
3. Savjetodavna mišljenja Suda upućuju se Odboru ministara.

Članak 50.

TROŠKOVI SUDA

Troškove Suda snosi Vijeće Europe.

Članak 51.

POVLASTICE I IMUNITETI SUDACA

Suci uživaju za vrijeme vršenja svojih funkcija povlastice i imunitete predviđene člankom 40. Statuta Vijeća Europe te sporazumima sklopljenim na temelju tog članka.

ODJELJAK III.1, 2 - *Mješovite odredbe*

Članak 52.

UPITI GLAVNOG TAJNIKA

Na zahtjev glavnog tajnika Vijeća Europe svaka visoka ugovorna stranka dostavit će objašnjenje o načinu na koji njezino unutarnje pravo osigurava djelotvornu primjenu svih odredaba Konvencije.

Članak 53.

OSIGURANJE POSTOJEĆIH LJUDSKIH PRAVA

Ništa u ovoj Konvenciji neće se tumačiti kao da ograničava ili ukida bilo koje ljudsko pravo i temeljnu slobodu koji su priznati zakonima neke visoke ugovorne stranke ili bilo kojim drugim sporazumom kojega je ona stranka.

Članak 54.

OVLASTI ODBORA MINISTARA

Ništa u ovoj Konvenciji ne ograničuje ovlasti Odbora ministara povjerene mu Statutom Vijeća Europe.

Članak 55.

ISKLJUČENJE DRUGIH SREDSTAVA RJEŠAVANJA SPOROVA

Visoke ugovorne stranke sporazumne su da se, osim u slučaju posebnog sporazuma, neće pozivati na ugovore, konvencije ili izjave koji su između njih na snazi kako bi neki spor proizašao iz tumačenja ili primjene ove Konvencije tužbom podvrgle rješavanju putem nekog drugog sredstva osim onih koja su predviđena ovom Konvencijom.

Članak 56.

TERITORIJALNA PRIMJENA

1. 3 Svaka država može, prilikom ratifikacije ili u bilo kojem kasnijem času, notifikacijom upućenom glavnom tajniku Vijeća Europe izjaviti da će se ova Konvencija, podložno stavku 4. ovoga članka, primjenjivati na sva ili na neka područja za čije je međunarodne odnose ona odgovorna.

2. Konvencija će se primjenjivati na području ili područjima navedenim u notifikaciji od tridesetoga dana nakon što glavni tajnik Vijeća Europe primi tu notifikaciju.

3. Na tim će se područjima odredbe ove Konvencije primjenjivati vodeći računa o lokalnim uvjetima.

4. 1 Svaka država koja je dala izjavu u skladu sa stavkom 1. ovoga članka može naknadno u svakom času izjaviti da za jedno ili više područja na koja se izjava odnosi, prihvaća nadležnost Suda da prima tužbe fizičkih osoba, nevladinih organizacija ili skupina pojedinaca u skladu s člankom 34. ove Konvencije.

Članak 57.

REZERVE

1. Prilikom potpisivanja ove Konvencije ili polaganja isprave o njezinoj ratifikaciji svaka država može staviti rezervu na određenu odredbu ove Konvencije ukoliko neki zakon koji je u tom času na snazi na njezinom području nije u skladu s tom odredbom. Na temelju ovoga članka nije dozvoljeno stavljanje rezervi opće naravi.
2. Svaka rezerva stavljena na temelju ovoga članka treba sadržavati kratak prikaz zakona na koji se odnosi.

Članak 58.

OTKAZIVANJE

1. Visoka ugovorna stranka može otkazati ovu Konvenciju samo nakon isteka roka od pet godina od dana kad je ona postala stranka Konvencije i šest mjeseci nakon što je svoju namjeru da otkaže Konvenciju notificirala glavnom tajniku Vijeća Europe, koji će o tome obavijestiti druge visoke ugovorne stranke.
2. Takvo otkazivanje ne može dotičnu visoku ugovornu stranku osloboditi njezinih obveza na temelju ove Konvencije u odnosu na bilo koji čin koji bi mogao predstavljati kršenje tih obveza, a koji je ona poduzela prije dana od kojega je otkazivanje postalo pravovaljano.
3. Uz istu rezervu prestaje biti strankom ove Konvencije svaka visoka ugovorna stranka koja prestaje biti članicom Vijeća Europe.
4.1 Konvencija se može otkazati, u skladu s odredbama prethodnih stavaka, glede svakog područja na koje je njezina primjena protegnuta na temelju članka 56.

Članak 59.

POTPISIVANJE I RATIFIKACIJA

1. Ova će Konvencija biti otvorena za potpisivanje članicama Vijeća Europe. Ona podliježe ratifikaciji. Ratifikacije se polažu kod glavnog tajnika Vijeća Europe.
2. Ova Konvencija stupa na snagu nakon polaganja deset isprava o ratifikaciji.
3. Za svaku potpisnicu koja je naknadno ratificira Konvencija stupa na snagu na dan polaganja njezine isprave o ratifikaciji.
4. Glavni tajnik Vijeća Europe notificirat će svakom članu Vijeća Europe stupanje na snagu Konvencije, imena visokih ugovornih stranaka koje su je ratificirale i polaganje svih isprava o ratifikaciji do kojih naknadno dođe.
SASTAVLJENO u Rimu 4. studenoga 1950. na engleskom i francuskom, s tim da su oba teksta jednako vjerodostojna, u jednom primjerku koji će se položiti u arhiv Vijeća Europe. Glavni tajnik Vijeća Europe dostavit će ovjerovljene prijepise svim potpisnicama.

PROTOKOL

uz Konvenciju za zaštitu ljudskih prava i temeljnih sloboda3

Pariz, 20. ožujka 1952.

Vlade potpisnice ovoga Protokola, članice Vijeća Europe,
odlučne da poduzmu potrebne mjere da bi zajednički osigurale ostvarenje određenih prava i sloboda uz ona koja su već uključena u odjeljku I. Konvencije za zaštitu ljudskih prava i temeljnih sloboda, potpisane u Rimu 4. studenoga 1950 (dalje: "Konvencija"),
sporazumjele su se kako slijedi:

Članak 1.

ZAŠTITA VLASNIŠTVA

Svaka fizička ili pravna osoba ima pravo na mirno uživanje svojega vlasništva. Nitko se ne smije lišiti svoga vlasništva, osim u javnom interesu, i to samo uz uvjete predviđene zakonom i općim načelima međunarodnoga prava.
Prethodne odredbe, međutim, ni na koji način ne umanjuju pravo države da primijeni zakone koje smatra potrebnima da bi uredila upotrebu vlasništva u skladu s općim interesom ili za osiguranje plaćanja poreza ili drugih doprinosa ili kazni.

Članak 2.

PRAVO NA OBRAZOVANJE

Nikome neće biti uskraćeno pravo na obrazovanje. U obavljanju svojih funkcija povezanih s odgojem i poučavanjem država će poštovati pravo roditelja da osiguraju odgoj i poučavanje u skladu sa svojim vjerskim i filozofskim uvjerenjima.

Članak 3.

PRAVO NA SLOBODNE IZBORE

Visoke ugovorne stranke obvezuju se da će u razumnim razdobljima provoditi slobodne izbore tajnim glasovanjem, u uvjetima koji osiguravaju slobodno izražavanje mišljenja naroda pri izboru zakonodavnih tijela.

Članak 4. 1

TERITORIJALNA PRIMJENA

Svaka visoka ugovorna stranka može prilikom potpisivanja ili ratifikacije, ili u bilo kojem kasnijem času, priopćiti glavnom tajniku Vijeća Europe izjavu o tome u kojoj se mjeri obvezuje da će odredbe ovoga Protokola primjenjivati na područja, navedena u izjavi, za čije je međunarodne odnose ona odgovorna.
Svaka visoka ugovorna stranka koja je priopćila izjavu u smislu prethodnoga stavka može povremeno priopćiti novu izjavu kojom mijenja uvjete bilo koje ranije izjave ili izjavljuje da prestaje s primjenom odredaba ovoga Protokola u odnosu na bilo koje područje.
Izjava dana u skladu s ovim člankom vrijedi kao da je dana u skladu sa stavkom 1. članka 56.

Konvencije.

Članak 5.

ODNOS PREMA KONVENCIJI

Visoke ugovorne stranke smatraju odredbe članaka 1, 2, 3. i 4. ovoga Protokola dopunskim člancima uz Konvenciju i sve će se odredbe Konvencije primjenjivati u skladu s time.

Članak 6.

POTPISIVANJE I RATIFIKACIJA

Ovaj će Protokol biti otvoren za potpisivanje članicama Vijeća Europe koje su potpisnice Konvencije. Protokol podliježe ratifikaciji prilikom, ili nakon, ratifikacije Konvencije. Stupa na snagu nakon polaganja deset isprava o ratifikaciji. Za svaku potpisnicu koja ga naknadno ratificira Protokol stupa na snagu na dan polaganja njezine isprave o ratifikaciji.

Isprave o ratifikaciji polažu se kod glavnog tajnika Vijeća Europe, koji će notificirati svim članicama imena država koje su ratificirale Protokol.

Sastavljeno u Parizu 20. ožujka 1952, na engleskom i francuskom, s tim da su oba teksta jednako vjerodostojna, u jednom primjerku koji će se položiti u arhiv Vijeća Europe. Glavni tajnik dostavit će ovjerovljene prijepise svakoj vladi potpisnici.

PROTOKOL br. 4

uz Konvenciju za zaštitu ljudskih prava i temeljnih sloboda o osiguranju određenih prava i sloboda uz ona uključena u Konvenciju i Protokol br. 1 1

Strasbourg, 16. rujna 1963.

Vlade potpisnice ovoga Protokola, članice Vijeća Europe,

odlučne da poduzmu potrebne mjere da bi zajednički osigurale ostvarenje određenih prava i sloboda uz ona koja su već uključena u odjeljku I. Konvencije za zaštitu ljudskih prava i temeljnih sloboda, potpisane u Rimu 4. studenoga 1950. (dalje: "Konvencija") i u člancima 1. do 3. Protokola br. 1 uz Konvenciju potpisanog u Parizu 20. ožujka 1952, sporazumjele su se kako slijedi:

Članak 1.

ZABRANA DUŽNIČKOG ZATVORA

Nitko se ne smije lišiti slobode samo na temelju nesposobnosti da ispuni ugovornu obvezu.

Članak 2.

SLOBODA KRETANJA

1. Svatko tko se zakonito nalazi na području neke države ima pravo na slobodu kretanja i slobodni izbor svojega boravišta na tom području.

2. Svatko je slobodan napustiti bilo koju zemlju, uključujući i svoju vlastitu.
3. Ne mogu se postavljati nikakva ograničenja ostvarivanju tih prava, osim ona koja su u skladu sa zakonom i koja su u demokratskom društvu nužna radi interesa državne sigurnosti ili javnog reda i mira, za održavanje javnog poretka, radi spriječavanja zločina, radi zaštite zdravlja ili morala ili radi zaštite prava i sloboda drugih.
4. Prava utvrđena u stavku 1. mogu također biti podvrgnuta, u određenim dijelovima područja, ograničenjima utvrđenima u skladu sa zakonom i koja su opravdana zaštitom javnog interesa u demokratskom društvu.

Članak 3.

ZABRANA PROTJERIVANJA VLASTITIH DRŽAVLJANA

1. Nitko ne smije biti protjeran, upotrebom bilo pojedinačnih bilo kolektivnih mjera, s područja države čije je državljanin.
2. Nitko ne smije biti lišen prava da uđe na područje države čiji je državljanin.

Članak 4.

ZABRANA KOLEKTIVNOG PROTJERIVANJA STRANACA

Kolektivno protjerivanje stranaca je zabranjeno.

Članak 5.

TERITORIJALNA PRIMJENA

1. Svaka visoka ugovorna stranka može prilikom potpisivanja ili ratifikacije, ili u bilo kojem kasnijem času, priopćiti glavnom tajniku Vijeća Europe izjavu o tome u kojoj se mjeri obvezuje da će odredbe ovoga Protokola primjenjivati na područja, navedena u izjavi, za čije je međunarodne odnose ona odgovorna.
2. Svaka visoka ugovorna stranka koja je priopćila izjavu u smislu prethodnoga stavka može povremeno priopćiti novu izjavu kojom mijenja uvjete ranije izjave ili izjavljuje da prestaje s primjenom odredaba ovoga Protokola u odnosu na bilo koje područje.
3. 1 Izjava dana u skladu s ovim člankom vrijedi kao da je dana u skladu sa stavkom 1. članka 56. Konvencije.
4. Područje bilo koje države na koje se ovaj Protokol primjenjuje temeljem ratifikacije ili prihvata te države i svako područje na koje se ovaj Protokol primjenjuje temeljem izjave te države dane na temelju ovoga članka mogu se smatrati zasebnim područjima u svrhu upućivanja na područje neke države u člancima 2. i 3.
5. 2 Svaka država koja je dala izjavu u skladu sa stavkom 1. ili 2. ovoga članka može, u bilo kojem kasnijem času, u ime jednog ili više područja na koja se izjava odnosi, izjaviti da prihvaća nadležnost Suda da prima zahtjeve pojedinaca, nevladinih organizacija ili skupina pojedinaca kako je predviđeno u članku 34. Konvencije glede svih članaka ili bilo kojeg članka od 1. do 4. ovoga Protokola.

Članak 6.2

ODNOS PREMA KONVENCIJI

Visoke ugovorne stranke smatraju odredbe članaka 1. do 5. ovoga Protokola dopunskim člancima uz Konvenciju i sve će se odredbe Konvencije primjenjivati u skladu s time.

Članak 7.

POTPISIVANJE I RATIFIKACIJA

1. Ovaj će Protokol biti otvoren za potpisivanje članicama Vijeća Europe koje su potpisnice Konvencije. Protokol podliježe ratifikaciji prilikom, ili nakon, ratifikacije Konvencije. On stupa na snagu nakon polaganja pet isprava o ratifikaciji. Za svaku potpisnicu koja ga naknadno ratificira Protokol stupa na snagu na dan polaganja njezine isprave o ratifikaciji.

2. Isprave o ratifikaciji polažu se kod glavnog tajnika Vijeća Europe, koji će notificirati svim članicama imena država koje su ratificirale Protokol.

U potvrdu toga su potpisani, propisno ovlašteni, potpisali ovaj Protokol.

Sastavljeno u Strasbourgu 16. rujna 1963, na engleskom i francuskom, s tim da su oba teksta jednako vjerodostojna, u jednom primjerku koji će se položiti u arhiv Vijeća Europe. Glavni tajnik Vijeća Europe dostavit će ovjerovljene prijepise svakoj državi potpisnici.

PROTOKOL br. 6

uz Konvenciju za zaštitu ljudskih prava i temeljnih sloboda o ukidanju smrtne kazne 1

Strasbourg, 28. travnja 1983.

Države članice Vijeća Europe, potpisnice ovoga Protokola uz Konvenciju za zaštitu ljudskih prava i temeljnih sloboda potpisanu u Rimu 4. studenoga 1950. (dalje: "Konvencija"), uzimajući u obzir da promjene do kojih je došlo u više država članica Vijeća Europe izražavaju opću tendenciju u prilog ukidanju smrtne kazne, sporazumjele su se kako slijedi:

Članak 1.

UKIDANJE SMRTNE KAZNE

Smrtna kazna se ukida. Nitko ne smije biti osuđen na takvu kaznu ili pogubljen.

Članak 2.

SMRTNA KAZNA U VRIJEME RATA

Neka država može zakonom predvidjeti smrtnu kaznu za djela počinjena u vrijeme rata ili neposredne ratne opasnosti; takva se kazna može primijeniti samo u zakonom određenim slučajevima i u skladu s odredbama toga zakona. Država mora priopćiti glavnom tajniku Vijeća Europe relevantne odredbe toga zakona.

Članak 3.

ZABRANA UKIDANJA

Odredbe ovoga Protokola ne mogu se derogirati na temelju članka 15. Konvencije.

Članak 4.2

ZABRANA REZERVI

Rezerve na temelju članka 57. Konvencije ne mogu se staviti na odredbe ovoga Protokola.

Članak 5.

TERITORIJALNA PRIMJENA

1. Svaka država može, prilikom potpisivanja ili polaganja isprave o ratifikaciji, prihvatu ili odobrenju, navesti područje ili područja na koja će se ovaj Protokol primjenjivati.

2. Svaka država može u bilo kojem kasnijem času, izjavom upućenom glavnom tajniku Vijeća Europe, proširiti primjenu ovoga Protokola na bilo koje drugo područje koje je navedeno u izjavi. U odnosu na to područje ovaj Protokol stupa na snagu prvoga dana u mjesecu koji slijedi nakon dana kad glavni tajnik primi takvu izjavu.

3. Svaka izjava dana na temelju dvaju prethodnih stavaka glede bilo kojeg područja označenog u takvoj izjavi može se povući notifikacijom upućenom glavnom tajniku. Povlačenje stupa na snagu prvoga dana u mjesecu koji slijedi nakon dana kad glavni tajnik primi takvu notifikaciju.

Članak 6.

ODNOS PREMA KONVENCIJI

Države stranke smatraju odredbe članaka 1. do 5. ovoga Protokola dopunskim člancima uz Konvenciju i sve će se odredbe Konvencije primjenjivati u skladu s time.

Članak 7.

POTPISIVANJE I RATIFIKACIJA

Ovaj će Protokol biti otvoren za potpisivanje državama članicama Vijeća Europe, potpisnicama Konvencije. Protokol podliježe ratifikaciji, prihvatu ili odobrenju. Država članica Vijeća Europe ne može ratificirati, prihvatiti ili odobriti ovaj Protokol ako istodobno ili prethodno nije ratificirala Konvenciju. Isprave o ratifikaciji, prihvatu ili odobrenju polažu se kod glavnog tajnika Vijeća Europe.

Članak 8.

STUPANJE NA SNAGU

1. Ovaj Protokol stupa na snagu prvoga dana u mjesecu koji slijedi nakon dana kad je pet država članica Vijeća Europe izrazilo svoj pristanak da bude vezano ovim Protokolom u skladu s odredbama članka 7.

2. Za svaku državu članicu koja naknadno izrazi svoj pristanak da bude vezana ovim Protokolom on

stupa na snagu prvoga dana u mjesecu koji slijedi nakon dana polaganja isprave o ratifikaciji, prihvatu ili odobrenju.

Članak 9.

FUNKCIJE DEPOZITARA

Glavni tajnik Vijeća Europe notificirat će državama članicama Vijeća:

a) svaki potpis;

b) polaganje svake isprave o ratifikaciji, prihvatu ili odobrenju;

c) svaki dan stupanja na snagu ovoga Protokola u skladu s člancima 5. i 8;

d) svaki drugi čin, notifikaciju ili priopćenje koji se odnose na ovaj Protokol.

U potvrdu toga su potpisani, propisno ovlašteni, potpisali ovaj Protokol.

Sastavljeno u Strasbourgu 28. travnja 1983, na engleskom i francuskom, s tim da su oba teksta jednako vjerodostojna, u jednom primjerku koji će se položiti u arhiv Vijeća Europe. Glavni tajnik Vijeća Europe dostavit će ovjerovljene prijepise ovoga Protokola svakoj državi članici Vijeća Europe.

PROTOKOL br. 7

uz Konvenciju za zaštitu ljudskih prava i temeljnih sloboda 1
Strasbourg, 22. studenoga 1984.

Države članice Vijeća Europe, potpisnice ovoga Protokola,

odlučne da poduzmu daljnje mjere da bi zajednički osigurale ostvarenje određenih prava i sloboda putem Konvencije za zaštitu ljudskih prava i temeljnih sloboda potpisane u Rimu 4. studenoga 1950 (dalje: "Konvencija"), sporazumjele su se kako slijedi:

Članak 1.

POSTUPOVNE GARANCIJE GLEDE PROTJERIVANJA STRANACA

1. Stranac koji zakonito boravi na području neke države ne smije biti iz nje protjeran, osim radi izvršenja odluke donesene u skladu sa zakonom i treba mu dospustiti da:

a) iznese razloge protiv svog protjerivanja;

b) zatraži ponovno razmatranje svog slučaja; i

c) u tu svrhu bude zastupan pred nadležnim tijelom, ili pred osobom ili osobama koje to tijelo imenuje.

2. Stranac može biti protjeran prije no što je ostvario prava iz stavka 1.a), b) i c) ovoga članka kad je protjerivanje nužno radi interesa javnog reda ili se temelji na razlozima državne sigurnosti.

Članak 2.

PRAVO NA ŽALBU U KAZNENIM PREDMETIMA

1. Svatko osuđen od suda za kazneno djelo ima pravo od višeg suda tražiti ponovno razmatranje svoje presude ili kazne. Ostvarenje toga prava, kao i razlozi iz kojih se ono može vršiti, uređuju se

zakonom.

2. Od ovoga prava mogu se zakonom propisati iznimke za lakša kaznena djela, ili u slučajevima kad je nekoj osobi u prvom stupnju suđeno pred najvišim sudom ili ako je osuđena povodom žalbe protiv oslobađajuće presude.

Članak 3.

NAKNADA ŠTETE ZBOG POGREŠNE PRESUDE

Kad je neka osoba osuđena pravomoćnom presudom za kazneno djelo i kad je naknadno njezina presuda poništena, ili je ta osoba pomilovana na temelju novih ili novootkrivenih činjenica koje upućuju na pogrešnu presudu, osoba koja je izdržavala kaznu kao posljedicu te presude obeštetit će se u skladu sa zakonom ili praksom dotične države, osim ako se dokaže da je sama djelomice ili u cijelosti odgovorna za zakašnjelo utvrđenje do tada nepoznatih činjenica.

Članak 4.

PRAVO DA SE NE BUDE DVA PUTA SUĐEN ILI KAŽNJEN U ISTOJ STVARI

1. Nikome se ne može ponovno suditi niti ga se može kazniti u kaznenom postupku iste države za kazneno djelo za koje je već pravomoćno oslobođen ili osuđen u skladu sa zakonom i kaznenim postupkom te države.

2. Odredbe prethodnoga stavka ne sprječavaju ponovno razmatranje slučaja u skladu sa zakonom i kaznenim postupkom dotične države ako postoje dokazi o novim ili novootkrivenim činjenicama, ili ako je u prethodnom postupku došlo do bitnih povreda koje su mogle utjecati na rješenje slučaja.

3. Ovaj se članak ne može derogirati na temelju članka 15. Konvencije.

Članak 5.

JEDNAKOST MEĐU SUPRUŽNICIMA

Supružnici međusobno i u odnosima prema svojoj djeci uživaju jednaka prava i obveze privatnopravne naravi pri sklapanju braka, za vrijeme trajanja braka i u slučaju razvoda. Ovaj članak ne sprječava države da poduzmu takve mjere koje su potrebne u interesu djece.

Članak 6.

TERITORIJALNA PRIMJENA

1. Svaka država može, prilikom potpisivanja ili polaganja isprave o ratifikaciji, prihvatu ili odobrenju, označiti područje ili područja na koja će se ovaj Protokol primjenjivati i izjaviti u kojoj se mjeri obvezuje da će odredbe ovoga Protokola primjenjivati na to područje ili područja.

2. Svaka država može u bilo kojem kasnijem času izjavom upućenom glavnom tajniku Vijeća Europe

proširiti primjenu ovoga Protokola na bilo koje drugo područje koje je navedeno u izjavi. U odnosu na to područje Protokol stupa na snagu prvoga dana u mjesecu koji slijedi nakon isteka razdoblja od dva mjeseca od dana kad glavni tajnik primi takvu izjavu.

3. Svaka izjava dana na temelju dvaju prethodnih stavaka glede bilo kojeg područja označenog u takvoj izjavi može se povući ili izmijeniti notifikacijom upućenom glavnom tajniku. Povlačenje ili izmjena stupaju na snagu prvog dana u mjesecu koji slijedi nakon isteka razdoblja od dva mjeseca od dana kad glavni tajnik primi takvu notifikaciju.

4. 1 Izjava dana u skladu s ovim člankom vrijedi kao da je dana u skladu sa stavkom 1. članka 56. Konvencije.

5. Područje bilo koje države na koje se ovaj Protokol primjenjuje temeljem ratifikacije, prihvata ili odobrenja te države i svako područje na koje se ovaj Protokol primjenjuje temeljem izjave te države dane na temelju ovoga članka, mogu se smatrati zasebnim područjima u svrhu upućivanja na područje neke države u članku 1.

6. 2 Svaka država koja je dala izjavu u skladu sa stavkom 1. ili 2. ovoga članka može, u bilo kojem kasnijem času, u ime jednog ili više područja na koja se izjava odnosi, izjaviti da prihvaća nadležnost Suda da prima zahtjeve pojedinaca, nevladinih organizacija ili skupina pojedinaca kako je predviđeno u članku 34. Konvencije glede članaka 1. do 5. ovoga Protokola.

Članak 7.1

ODNOS PREMA KONVENCIJI

1. Države stranke smatraju odredbe članaka 1. do 6. ovoga Protokola dopunskim člancima uz Konvenciju i sve će se odredbe Konvencije primjenjivati u skladu s time.

Članak 8.

POTPISIVANJE I RATIFIKACIJA

1. Ovaj će Protokol biti otvoren za potpisivanje državama članicama Vijeća Europe potpisnicama Konvencije. Protokol podliježe ratifikaciji, prihvatu ili odobrenju. Država članica Vijeća Europe ne može ratificirati, prihvatiti ili odobriti ovaj Protokol ako prethodno ili istodobno ne ratificira Konvenciju. Isprave o ratifikaciji, prihvatu ili odobrenju polažu se kod glavnog tajnika Vijeća Europe.

Članak 9.

STUPANJE NA SNAGU

1. Ovaj Protokol stupa na snagu prvoga dana u mjesecu koji slijedi nakon isteka razdoblja od dva mjeseca od dana kad je sedam država članica Vijeća Europe izrazilo svoj pristanak da budu vezane ovim Protokolom, u skladu s odredbama članka 8.

2. Za svaku državu članicu koja naknadno izrazi svoj pristanak da bude vezana ovim Protokolom on stupa na snagu prvog dana u mjesecu koji slijedi nakon isteka razdoblja od dva mjeseca od dana polaganja isprave o ratifikaciji, prihvatu ili odobrenju.

Članak 10.

FUNKCIJE DEPOZITARA

1. Glavni tajnik Vijeća Europe notificirat će svim državama članicama Vijeća Europe:

a) svaki potpis;

b) polaganje svake isprave o ratifikaciji, prihvatu ili odobrenju;

c) svaki dan stupanja na snagu ovoga Protokola u skladu s člancima 6. i 9;

d) svaki drugi čin, notifikaciju ili izjavu koji se odnose na ovaj Protokol.

U potvrdu toga su potpisani, propisno ovlašteni, potpisali ovaj Protokol.

Sastavljeno u Strasbourgu 22. studenoga 1984. na engleskom i francuskom, s tim da su oba teksta jednako vjerodostojna, u jednom primjerku koji će se položiti u arhiv Vijeća Europe. Glavni tajnik Vijeća Europe dostavit će ovjerovljene prijepise svakoj državi članici Vijeća Europe.

III.

Tekstovi međunarodnih ugovora iz točke I. stupili su za Republiku Hrvatsku na snagu 1. studenoga 1998.

Klasa: 018-05/99-01/52

Urbroj: 521-05-01/03-99-01

Zagreb, 3. svibnja 1999.

Potpredsjednik Vlade i ministar vanjskih poslova **dr. Mate Granić,** v. r.

EUROPEAN COURT OF HUMAN RIGHTS
RULES OF COURT
STRASBOURG 1999
(As in force at 1 November 1998)

CONTENTS

Rule 1 Definitions

TITLE I – Organisation and Working of the Court

Chapter I – Judges
Rule 2 - Calculation of term of office
Rule 3 - Oath or solemn declaration
Rule 4 - Incompatible activities
Rule 5 - Precedence
Rule 6 - Resignation
Rule 7 - Dismissal from office
Chapter II – Presidency of the Court
Rule 8 - Election of the President and Vice-Presidents of the Court and the Presidents and Vice-Presidents of the Sections
Rule 9 - Functions of the President of the Court
Rule 10 - Functions of the Vice-Presidents of the Court
Rule 11 - Replacement of the President and the Vice-Presidents
Rule 12 - Presidency of Sections and Chambers
Rule 13 - Inability to preside
Rule 14 - Balanced representation of the sexes
Chapter III – The Registry
Rule 15 - Election of the Registrar

Rule 16 - Election of the Deputy Registrars
Rule 17 - Functions of the Registrar
Rule 18 - Organisation of the Registry
Chapter IV – The Working of the Court
Rule 19 - Seat of the Court
Rule 20 - Sessions of the plenary Court
Rule 21 - Other sessions of the Court
Rule 22 - Deliberations
Rule 23 - Votes
Chapter V – The Composition of the Court
Rule 24 - Composition of the Grand Chamber (as amended on 8.12.2000)
Rule 25 - Setting up of Sections
Rule 26 - Constitution of Chambers
Rule 27 - Committees
Rule 28 - Inability to sit, withdrawal or exemption
Rule 29 - *Ad hoc* judges
Rule 30 - Common interest
TITLE II – Procedure
Chapter I – General Rules
Rule 31 - Possibility of particular derogations
Rule 32 - Practice directions
Rule 33 - Public character of proceedings
Rule 34 - Use of languages
Rule 35 - Representation of Contracting Parties
Rule 36 - Representation of applicants
Rule 37 - Communications, notifications and summonses
Rule 38 - Written pleadings
Rule 39 - Interim measures
Rule 40 - Urgent notification of an application
Rule 41 - Case priority
Rule 42 - Measures for taking evidence
Rule 43 - Joinder and simultaneous examination of applications
Rule 44 - Striking out and restoration to the list
Chapter II – Institution of Proceedings
Rule 45 - Signatures
Rule 46 - Contents of an inter-State application
Rule 47 - Contents of an individual application
Chapter III – Judge Rapporteurs
Rule 48 - Inter-State applications
Rule 49 - Individual applications
Rule 50 - Grand Chamber proceedings
Chapter IV – Proceedings on Admissibility
Inter-State applications
Rule 51
Individual applications
Rule 52 - Assignment of applications to the Sections
Rule 53 - Procedure before a Committee
Rule 54 - Procedure before a Chamber

Inter-State and individual applications
Rule 55 - Pleas of inadmissibility
Rule 56 - Decision of a Chamber
Rule 57 - Language of the decision
Chapter V – Proceedings after the Admission of an Application
Rule 58 - Inter-State applications
Rule 59 - Individual applications
Rule 60 - Claims for just satisfaction

Rule 61 - Third-party intervention
Rule 62 - Friendly settlement
Chapter VI – Hearings
Rule 63 - Conduct of hearings
Rule 64 - Failure to appear at a hearing
Rule 65 - Convocation of witnesses, experts and other persons; costs of their appearance
Rule 66 - Oath or solemn declaration by witnesses and experts
Rule 67 - Objection to a witness or expert; hearing of a person for information purposes
Rule 68 - Questions put during hearings
Rule 69 - Failure to appear, refusal to give evidence or false evidence
Rule 70 - Verbatim record of hearings
Chapter VII – Proceedings before the Grand Chamber
Rule 71 - Applicability of procedural provisions
Rule 72 - Relinquishment of jurisdiction by a Chamber in favour of the Grand Chamber
Rule 73 - Request by a party for referral to the Grand Chamber
Chapter VIII – Judgments
Rule 74 - Contents of the judgment
Rule 75 - Ruling on just satisfaction
Rule 76 - Language of the judgment
Rule 77 - Signature, delivery and notification of the judgment
Rule 78 - Publication of judgments and other documents
Rule 79 - Request for interpretation of a judgment
Rule 80 - Request for revision of a judgment
Rule 81 - Rectification of errors in decisions and judgments
Chapter IX – Advisory Opinions
Rule 82
Rule 83
Rule 84
Rule 85
Rule 86
Rule 87
Rule 88
Rule 89
Rule 90
Chapter X – Legal Aid
Rule 91
Rule 92
Rule 93
Rule 94
Rule 95
Rule 96

TITLE III – Transitional Rules

Rule 97 - Judges' terms of office
Rule 98 -Presidency of the Sections
Rule 99 - Relations between the Court and the Commission
Rule 100 - Chamber and Grand Chamber proceedings
Rule 101 - Grant of legal aid
Rule 102 - Request for interpretation or revision of a judgment

TITLE IV – Final Clauses

Rule 103 - Amendment or suspension of a Rule
Rule 104 - Entry into force of the Rules

The European Court of Human Rights,

Having regard to the Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto,

Makes the present Rules:

Rule 1

(Definitions)

For the purposes of these Rules unless the context otherwise requires:

(a) the term "Convention" means the Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto;

(b) the expression "plenary Court" means the European Court of Human Rights sitting in plenary session;

(c) the expression "Grand Chamber" means the Grand Chamber of seventeen judges constituted in pursuance of Article 27 § 1 of the Convention;

(d) the term "Section" means a Chamber set up by the plenary Court for a fixed period in pursuance of Article 26 (b) of the Convention and the expression "President of the Section" means the judge elected by the plenary Court in pursuance of Article 26 (c) of the Convention as President of such a Section;

(e) the term "Chamber" means any Chamber of seven judges constituted in pursuance of Article 27 § 1 of the Convention and the expression "President of the Chamber" means the judge presiding over such a "Chamber";

(f) the term "Committee" means a Committee of three judges set up in pursuance of Article 27 § 1 of the Convention;

(g) the term "Court" means either the plenary Court, the Grand Chamber, a Section, a Chamber, a Committee or the panel of five judges referred to in Article 43 § 2 of the Convention;

(h) the expression "*ad hoc* judge" means any person, other than an elected judge, chosen by a Contracting Party in pursuance of Article 27 § 2 of the Convention to sit as a member of the Grand Chamber or as a member of a Chamber;

(i) the terms "judge" and "judges" mean the judges elected by the Parliamentary Assembly of the Council of Europe or *ad hoc* judges;

(j) the expression "Judge Rapporteur" means a judge appointed to carry out the tasks provided for in Rules 48 and 49;

(k) the term "Registrar" denotes the Registrar of the Court or the Registrar of a Section according to the context;

(l) the terms "party" and "parties" mean

- the applicant or respondent Contracting Parties;
- the applicant (the person, non-governmental organisation or group of individuals) that lodged a complaint under Article 34 of the Convention;

(m) the expression "third party" means any Contracting State or any person concerned who, as provided for in Article 36 §§ 1 and 2 of the Convention, has exercised its right or been invited to

submit written comments or take part in a hearing;

(n) the expression "Committee of Ministers" means the Committee of Ministers of the Council of Europe;

(o) the terms "former Court" and "Commission" mean respectively the European Court and European Commission of Human Rights set up under former Article 19 of the Convention.

TITLE I

ORGANISATION AND WORKING OF THE COURT

Chapter I

Judges

Rule 2

(Calculation of term of office)

1. The duration of the term of office of an elected judge shall be calculated as from the date of election. However, when a judge is re-elected on the expiry of the term of office or is elected to replace a judge whose term of office has expired or is about to expire, the duration of the term of office shall, in either case, be calculated as from the date of such expiry.

2. In accordance with Article 23 § 5 of the Convention, a judge elected to replace a judge whose term of office has not expired shall hold office for the remainder of the predecessor's term.

3. In accordance with Article 23 § 7 of the Convention, an elected judge shall hold office until a successor has taken the oath or made the declaration provided for in Rule 3.

Rule 3

(Oath or solemn declaration)

1. Before taking up office, each elected judge shall, at the first sitting of the plenary Court at which the judge is present or, in case of need, before the President of the Court, take the following oath or make the following solemn declaration:

"I swear" – or "I solemnly declare" – "that I will exercise my functions as a judge honourably, independently and impartially and that I will keep secret all deliberations."

2. This act shall be recorded in minutes.

Rule 4

(Incompatible activities)

In accordance with Article 21 § 3 of the Convention, the judges shall not during their term of office engage in any political or administrative activity or any professional activity which is incompatible with their independence or impartiality or with the demands of a full-time office. Each judge shall declare to the President of the Court any additional activity. In the event of a disagreement between the President and the judge concerned, any question arising shall be decided by the plenary Court.

Rule 5

(Precedence)

1. Elected judges shall take precedence after the President and Vice-Presidents of the Court and the Presidents of the Sections, according to the date of their election; in the event of re-election, even if it

is not an immediate re-election, the length of time during which the judge concerned previously held office as a judge shall be taken into account.

2. Vice-Presidents of the Court elected to office on the same date shall take precedence according to the length of time they have served as judges. If the length of time they have served as judges is the same, they shall take precedence according to age. The same rule shall apply to Presidents of Sections.

3. Judges who have served the same length of time as judges shall take precedence according to age.

4. *Ad hoc* judges shall take precedence after the elected judges according to age.

Rule 6

(Resignation)

Resignation of a judge shall be notified to the President of the Court, who shall transmit it to the Secretary General of the Council of Europe. Subject to the provisions of Rules 24 § 3 *in fine* and 26 § 2, resignation shall constitute vacation of office.

Rule 7

(Dismissal from office)

No judge may be dismissed from his or her office unless the other judges, meeting in plenary session, decide by a majority of two-thirds of the elected judges in office that he or she has ceased to fulfil the required conditions. He or she must first be heard by the plenary Court. Any judge may set in motion the procedure for dismissal from office.

Chapter II

Presidency of the Court

Rule 8

(Election of the President and Vice-Presidents of the Court and the Presidents and Vice-Presidents of the Sections)

1. The plenary Court shall elect its President, two Vice-Presidents and the Presidents of the Sections for a period of three years, provided that such period shall not exceed the duration of their terms of office as judges. They may be re-elected.

2. Each Section shall likewise elect for a renewable period of three years a Vice-President, who shall replace the President of the Section if the latter is unable to carry out his or her duties.

3. The Presidents and Vice-Presidents shall continue to hold office until the election of their successors.

4. If a President or a Vice-President ceases to be a member of the Court or resigns from office before its normal expiry, the plenary Court or the relevant Section, as the case may be, shall elect a successor for the remainder of the term of that office.

5. The elections referred to in this Rule shall be by secret ballot; only the elected judges who are present shall take part. If no judge receives an absolute majority of the elected judges present, a ballot shall take place between the two judges who have received most votes. In the event of a tie, preference shall be given to the judge having precedence in accordance with Rule 5.

Rule 9

(Functions of the President of the Court)

1. The President of the Court shall direct the work and administration of the Court. The President shall represent the Court and, in particular, be responsible for its relations with the authorities of the Council of Europe.

2. The President shall preside at plenary meetings of the Court, meetings of the Grand Chamber and meetings of the panel of five judges.

3. The President shall not take part in the consideration of cases being heard by Chambers except where he or she is the judge elected in respect of a Contracting Party concerned.

Rule 10

(Functions of the Vice-Presidents of the Court)

The Vice-Presidents of the Court shall assist the President of the Court. They shall take the place of the President if the latter is unable to carry out his or her duties or the office of President is vacant, or at the request of the President. They shall also act as Presidents of Sections.

Rule 11

(Replacement of the President and the Vice-Presidents of the Court)

If the President and the Vice-Presidents of the Court are at the same time unable to carry out their duties or if their offices are at the same time vacant, the office of President of the Court shall be assumed by a President of a Section or, if none is available, by another elected judge, in accordance with the order of precedence provided for in Rule 5.

Rule 12

(Presidency of Sections and Chambers)

The Presidents of the Sections shall preside at the sittings of the Section and Chambers of which they are members. The Vice-Presidents of the Sections shall take their place if they are unable to carry out their duties or if the office of President of the Section concerned is vacant, or at the request of the President of the Section. Failing that, the judges of the Section and the Chambers shall take their place, in the order of precedence provided for in Rule 5.

Rule 13

(Inability to preside)

Judges of the Court may not preside in cases in which the Contracting Party of which they are nationals or in respect of which they were elected is a party.

Rule 14

(Balanced representation of the sexes)

In relation to the making of appointments governed by this and the following chapter of the present Rules, the Court shall pursue a policy aimed at securing a balanced representation of the sexes.

Chapter III
The Registry

Rule 15

(Election of the Registrar)

1. The plenary Court shall elect its Registrar. The candidates shall be of high moral character and must possess the legal, managerial and linguistic knowledge and experience necessary to carry out the functions attaching to the post.
2. The Registrar shall be elected for a term of five years and may be re-elected. The Registrar may not be dismissed from office, unless the judges, meeting in plenary session, decide by a majority of two-thirds of the elected judges in office that the person concerned has ceased to fulfil the required conditions. He or she must first be heard by the plenary Court. Any judge may set in motion the procedure for dismissal from office.
3. The elections referred to in this Rule shall be by secret ballot; only the elected judges who are present shall take part. If no candidate receives an absolute majority of the elected judges present, a ballot shall take place between the two candidates who have received most votes. In the event of a tie, preference shall be given, firstly, to the female candidate, if any, and, secondly, to the older candidate.
4. Before taking up office, the Registrar shall take the following oath or make the following solemn declaration before the plenary Court or, if need be, before the President of the Court:
"I swear" – or "I solemnly declare" – "that I will exercise loyally, discreetly and conscientiously the functions conferred upon me as Registrar of the European Court of Human Rights."

This act shall be recorded in minutes.

Rule 16

(Election of the Deputy Registrars)

1. The plenary Court shall also elect two Deputy Registrars on the conditions and in the manner and for the term prescribed in the preceding Rule. The procedure for dismissal from office provided for in respect of the Registrar shall likewise apply. The Court shall first consult the Registrar in both these matters.

2. Before taking up office, a Deputy Registrar shall take an oath or make a solemn declaration before the plenary Court or, if need be, before the President of the Court, in terms similar to those prescribed in respect of the Registrar. This act shall be recorded in minutes.

Rule 17

(Functions of the Registrar)

1. The Registrar shall assist the Court in the performance of its functions and shall be responsible for the organisation and activities of the Registry under the authority of the President of the Court.

2. The Registrar shall have the custody of the archives of the Court and shall be the channel for all communications and notifications made by, or addressed to, the Court in connection with the cases brought or to be brought before it.

3. The Registrar shall, subject to the duty of discretion attaching to this office, reply to requests for information concerning the work of the Court, in particular to enquiries from the press.

4. General instructions drawn up by the Registrar, and approved by the President of the Court, shall regulate the working of the Registry.

Rule 18

(Organisation of the Registry)

1. The Registry shall consist of Section Registries equal to the number of Sections set up by the Court and of the departments necessary to provide the legal and administrative services required by the Court.

2. The Section Registrar shall assist the Section in the performance of its functions and may be assisted by a Deputy Section Registrar.

3. The officials of the Registry, including the legal secretaries but not the Registrar and the Deputy Registrars, shall be appointed by the Secretary General of the Council of Europe with the agreement of the President of the Court or of the Registrar acting on the President’s instructions.

Chapter IV
The Working of the Court

Rule 19

(Seat of the Court)

1. The seat of the Court shall be at the seat of the Council of Europe at Strasbourg. The Court may, however, if it considers it expedient, perform its functions elsewhere in the territories of the member States of the Council of Europe.

2. The Court may decide, at any stage of the examination of an application, that it is necessary that an investigation or any other function be carried out elsewhere by it or one or more of its members.

Rule 20

(Sessions of the plenary Court)

1. The plenary sessions of the Court shall be convened by the President of the Court whenever the performance of its functions under the Convention and under these Rules so requires. The President of the Court shall convene a plenary session if at least one-third of the members of the Court so request, and in any event once a year to consider administrative matters.

2. The quorum of the plenary Court shall be two-thirds of the elected judges in office.

3. If there is no quorum, the President shall adjourn the sitting.

Rule 21

(Other sessions of the Court)

1. The Grand Chamber, the Chambers and the Committees shall sit full time. On a proposal by the President, however, the Court shall fix session periods each year.

2. Outside those periods the Grand Chamber and the Chambers shall be convened by their Presidents in cases of urgency.

Rule 22

(Deliberations)

1. The Court shall deliberate in private. Its deliberations shall remain secret.

2. Only the judges shall take part in the deliberations. The Registrar or the designated substitute, as well as such other officials of the Registry and interpreters whose assistance is deemed necessary, shall be present. No other person may be admitted except by special decision of the Court.

3. Before a vote is taken on any matter in the Court, the President may request the judges to state their opinions on it.

Rule 23

(Votes)

1. The decisions of the Court shall be taken by a majority of the judges present. In the event of a tie, a fresh vote shall be taken and, if there is still a tie, the President shall have a casting vote. This paragraph shall apply unless otherwise provided for in these Rules.

2. The decisions and judgments of the Grand Chamber and the Chambers shall be adopted by a majority of the sitting judges. Abstentions shall not be allowed in final votes on the admissibility and merits of cases.

3. As a general rule, votes shall be taken by a show of hands. The President may take a roll-call vote, in reverse order of precedence.

4. Any matter that is to be voted upon shall be formulated in precise terms.

Chapter V

The Composition of the Court

Rule 24
(Composition of the Grand Chamber)

1. The Grand Chamber shall be composed of seventeen judges and at least three substitute judges.

2. (a) The Grand Chamber shall include the President and the Vice-Presidents of the Court and the Presidents of the Sections. Any Vice-President of the Court or President of a Section who is unable to sit as a member of the Grand Chamber shall be replaced by the Vice-President of the relevant Section.

(b) The judge elected in respect of the State Party concerned or, where appropriate, the judge designated by virtue of Rule 29 or Rule 30 shall sit as an *ex officio* member of the Grand Chamber in accordance with Article 27 §§ 2 and 3 of the Convention.

(c) In cases referred to the Grand Chamber under Article 30 of the Convention, the Grand Chamber shall also include the members of the Chamber which relinquished jurisdiction.

(d) In cases referred to the Grand Chamber under Article 43 of the Convention, the Grand Chamber shall not include any judge who participated in the original Chamber's deliberations on the admissibility or merits of the case, except the President of that Chamber and the judge who sat in respect of the State Party concerned.

(e) The judges and substitute judges who are to complete the Grand Chamber in each case referred to it shall be designated from among the remaining judges by a drawing of lots by the President of the Court in the presence of the Registrar. The modalities for the drawing of lots shall be laid down by the Plenary Court, having due regard to the need for a geographically balanced composition reflecting the different legal systems among the Contracting Parties.

3. If any judges are prevented from sitting, they shall be replaced by the substitute judges in the order in which the latter were selected under paragraph 2 (e) of this Rule. Should the need arise, the President may in the course of the proceedings designate additional substitute judges in accordance with paragraph 2 (e) above.

4. The judges and substitute judges designated in accordance with the above provisions shall continue to sit in the Grand Chamber for the consideration of the case until the proceedings have been completed. Even after the end of their terms of office, they shall continue to deal with the case if they have participated in the consideration of the merits.

5. (a) The panel of five judges of the Grand Chamber called upon to consider requests submitted under Article 43 of the Convention shall be composed of

- the President of the Court;
- the Presidents or, if they are prevented from sitting, the Vice-Presidents of the Sections other than the Section from which was constituted the Chamber that dealt with the case whose referral to the Grand Chamber is being sought;
- further judges designated in rotation from among the judges other than those who dealt with the case

in the Chamber.

(b) No judge elected in respect of, or who is a national of, a Contracting Party concerned may be a member of the Panel.

(c) Any member of the panel unable to sit shall be replaced by another judge who did not deal with the case in the Chamber, who shall be designated in rotation."

Rule 25

(Setting up of Sections)

1. The Chambers provided for in Article 26 (b) of the Convention (referred to in these Rules as "Sections") shall be set up by the plenary Court, on a proposal by its President, for a period of three years with effect from the election of the presidential office-holders of the Court under Rule 8. There shall be at least four Sections.

2. Each judge shall be a member of a Section. The composition of the Sections shall be geographically and gender balanced and shall reflect the different legal systems among the Contracting Parties.

3. Where a judge ceases to be a member of the Court before the expiry of the period for which the Section has been constituted, the judge's place in the Section shall be taken by his or her successor as a member of the Court.

4. The President of the Court may exceptionally make modifications to the composition of the Sections if circumstances so require.

5. On a proposal by the President, the plenary Court may constitute an additional Section.

Rule 26

(Constitution of Chambers)

1. The Chambers of seven judges provided for in Article 27 § 1 of the Convention for the consideration of cases brought before the Court shall be constituted from the Sections as follows.

(a) The Chamber shall in each case include the President of the Section and the judge elected in respect of any Contracting Party concerned. If the latter judge is not a member of the Section to which the application has been assigned under Rule 51 or 52, he or she shall sit as an *ex officio* member of the Chamber in accordance with Article 27 § 2 of the Convention. Rule 29 shall apply if that judge is unable to sit or withdraws.

(b) The other members of the Chamber shall be designated by the President of the Section in rotation from among the members of the relevant Section.

(c) The members of the Section who are not so designated shall sit in the case as substitute judges.

2. Even after the end of their terms of office judges shall continue to deal with cases in which they have participated in the consideration of the merits.

Rule 27

(Committees)

1. Committees composed of three judges belonging to the same Section shall be set up under Article 27 § 1 of the Convention. After consulting the Presidents of the Sections, the President of the Court

shall decide on the number of Committees to be set up.

2. The Committees shall be constituted for a period of twelve months by rotation among the members of each Section, excepting the President of the Section.

3. The judges of the Section who are not members of a Committee may be called upon to take the place of members who are unable to sit.

4. Each Committee shall be chaired by the member having precedence in the Section.

Rule 28

(Inability to sit, withdrawal or exemption)

1. Any judge who is prevented from taking part in sittings for which he has been convoked shall, as soon as possible, give notice to the President of the Chamber.

2. A judge may not take part in the consideration of any case in which he or she has a personal interest or has previously acted either as the Agent, advocate or adviser of a party or of a person having an interest in the case, or as a member of a tribunal or commission of inquiry, or in any other capacity.

3. If a judge withdraws for one of the said reasons, or for some special reason, he or she shall inform the President of the Chamber, who shall exempt the judge from sitting.

4. If the President of the Chamber considers that a reason exists for a judge to withdraw, he or she shall consult with the judge concerned; in the event of disagreement, the Chamber shall decide.

Rule 29

(*Ad hoc* judges)

1. If the judge elected in respect of a Contracting Party concerned is unable to sit in the Chamber or withdraws, the President of the Chamber shall invite that Party to indicate within thirty days whether it wishes to appoint to sit as judge either another elected judge or, as an *ad hoc* judge, any other person possessing the qualifications required by Article 21 § 1 of the Convention and, if so, to state at the same time the name of the person appointed. The same rule shall apply if the person so appointed is unable to sit or withdraws.

2. The Contracting Party concerned shall be presumed to have waived its right of appointment if it does not reply within thirty days.

3. An *ad hoc* judge shall, at the opening of the first sitting fixed for the consideration of the case after the judge has been appointed, take the oath or make the solemn declaration provided for in Rule 3. This act shall be recorded in minutes.

Rule 30

(Common interest)

1. If several applicant or respondent Contracting Parties have a common interest, the President of the Court may invite them to agree to appoint a single elected judge or *ad hoc* judge in accordance with Article 27 § 2 of the Convention. If the Parties are unable to agree, the President shall choose by lot, from among the persons proposed as judges by these Parties, the judge called upon to sit *ex officio*.

2. In the event of a dispute as to the existence of a common interest, the plenary Court shall decide.

TITLE II

PROCEDURE

Chapter I

General Rules

Rule 31

(Possibility of particular derogations)

The provisions of this Title shall not prevent the Court from derogating from them for the consideration of a particular case after having consulted the parties where appropriate.

Rule 32

(Practice directions)

The President of the Court may issue practice directions, notably in relation to such matters as appearance at hearings and the filing of pleadings and other documents.

Rule 33

(Public character of proceedings)

1. Hearings shall be public unless, in accordance with paragraph 2 of this Rule, the Chamber in exceptional circumstances decides otherwise, either of its own motion or at the request of a party or any other person concerned.

2. The press and the public may be excluded from all or part of a hearing in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the Chamber in special circumstances where publicity would prejudice the interests of justice.

3. Following registration of an application, all documents deposited with the Registry, with the exception of those deposited within the framework of friendly-settlement negotiations as provided for in Rule 62, shall be accessible to the public unless the President of the Chamber, for the reasons set out in paragraph 2 of this Rule, decides otherwise, either of his or her own motion or at the request of a party or any other person concerned.

4. Any request for confidentiality made under paragraphs 1 or 3 of this Rule must give reasons and specify whether the hearing or the documents, as the case may be, should be inaccessible to the public in whole or in part.

Rule 34

(Use of languages)

1. The official languages of the Court shall be English and French.

2. Before the decision on the admissibility of an application is taken, all communications with and pleadings by applicants under Article 34 of the Convention or their representatives, if not in one of the Court's official languages, shall be in one of the official languages of the Contracting Parties.

3. (a) All communications with and pleadings by such applicants or their representatives in respect of a hearing, or after a case has been declared admissible, shall be in one of the Court's official languages, unless the President of the Chamber authorises the continued use of the official language of a Contracting Party.

(b) If such leave is granted, the Registrar shall make the necessary arrangements for the oral or written translation of the applicant's observations or statements.

4. (a) All communications with and pleadings by Contracting Parties or third parties shall be in one of the Court's official languages. The President of the Chamber may authorise the use of a non-official language.

(b) If such leave is granted, it shall be the responsibility of the requesting party to provide for and bear the costs of interpreting or translation into English or French of the oral arguments or written statements made.

5. The President of the Chamber may invite the respondent Contracting Party to provide a translation of its written submissions in the or an official language of that Party in order to facilitate the applicant's understanding of those submissions.

6. Any witness, expert or other person appearing before the Court may use his or her own language if he or she does not have sufficient knowledge of either of the two official languages. In that event the Registrar shall make the necessary arrangements for interpreting or translation.

Rule 35

(Representation of Contracting Parties)

The Contracting Parties shall be represented by Agents, who may have the assistance of advocates or advisers.

Rule 36

(Representation of applicants)

1. Persons, non-governmental organisations or groups of individuals may initially present applications under Article 34 of the Convention themselves or through a representative appointed under paragraph 4 of this Rule.

2. Following notification of the application to the respondent Contracting Party under Rule 54 § 3 (b), the President of the Chamber may direct that the applicant should be represented in accordance with paragraph 4 of this Rule.

3. The applicant must be so represented at any hearing decided on by the Chamber or for the purposes of the proceedings following a decision declaring the application admissible, unless the President of the Chamber decides otherwise.

4. (a) The representative of the applicant shall be an advocate authorised to practise in any of the Contracting Parties and resident in the territory of one of them, or any other person approved by the President of the Chamber.

(b) The President of the Chamber may, where representation would otherwise be obligatory, grant leave to the applicant to present his or her own case, subject, if necessary, to being assisted by an advocate or other approved representative.

(c) In exceptional circumstances and at any stage of the procedure, the President of the Chamber may, where he or she considers that the circumstances or the conduct of the advocate or other person appointed under the preceding sub-paragraphs so warrant, direct that the latter may no longer

represent or assist the applicant and that the applicant should seek alternative representation.

5. The advocate or other approved representative, or the applicant in person if he or she seeks leave to present his or her own case, must have an adequate knowledge of one of the Court's official languages. However, leave to use a non-official language may be given by the President of the Chamber under Rule 34 § 3.

Rule 37

(Communications, notifications and summonses)

1. Communications or notifications addressed to the Agents or advocates of the parties shall be deemed to have been addressed to the parties.

2. If, for any communication, notification or summons addressed to persons other than the Agents or advocates of the parties, the Court considers it necessary to have the assistance of the Government of the State on whose territory such communication, notification or summons is to have effect, the President of the Court shall apply directly to that Government in order to obtain the necessary facilities.

3. The same rule shall apply when the Court desires to make or arrange for the making of an investigation on the spot in order to establish the facts or to procure evidence or when it orders the appearance of a person who is resident in, or will have to cross, that territory.

Rule 38

(Written pleadings)

1. No written observations or other documents may be filed after the time-limit set by the President of the Chamber or the Judge Rapporteur, as the case may be, in accordance with these Rules. No written observations or other documents filed outside that time-limit or contrary to any practice direction issued under Rule 32 shall be included in the case file unless the President of the Chamber decides otherwise.

2. For the purposes of observing the time-limit referred to in paragraph 1 of this Rule, the material date is the certified date of dispatch of the document or, if there is none, the actual date of receipt at the Registry.

Rule 39

(Interim measures)

1. The Chamber or, where appropriate, its President may, at the request of a party or of any other person concerned, or of its own motion, indicate to the parties any interim measure which it considers should be adopted in the interests of the parties or of the proper conduct of the proceedings before it.

2. Notice of these measures shall be given to the Committee of Ministers.

3. The Chamber may request information from the parties on any matter connected with the implementation of any interim measure it has indicated.

Rule 40

(Urgent notification of an application)

In any case of urgency the Registrar, with the authorisation of the President of the Chamber, may,

without prejudice to the taking of any other procedural steps and by any available means, inform a Contracting Party concerned in an application of the introduction of the application and of a summary of its objects.

Rule 41

(Case priority)

The Chamber shall deal with applications in the order in which they become ready for examination. It may, however, decide to give priority to a particular application.

Rule 42

(Measures for taking evidence)

1. The Chamber may, at the request of a party or a third party, or of its own motion, obtain any evidence which it considers capable of providing clarification of the facts of the case. The Chamber may, *inter alia*, request the parties to produce documentary evidence and decide to hear as a witness or expert or in any other capacity any person whose evidence or statements seem likely to assist it in the carrying out of its tasks.

2. The Chamber may, at any time during the proceedings, depute one or more of its members or of the other judges of the Court to conduct an inquiry, carry out an investigation on the spot or take evidence in some other manner. It may appoint independent external experts to assist such a delegation.

3. The Chamber may ask any person or institution of its choice to obtain information, express an opinion or make a report on any specific point.

4. The parties shall assist the Chamber, or its delegation, in implementing any measures for taking evidence.

5. Where a report has been drawn up or some other measure taken in accordance with the preceding paragraphs at the request of an applicant or respondent Contracting Party, the costs entailed shall be borne by that Party unless the Chamber decides otherwise. In other cases the Chamber shall decide whether such costs are to be borne by the Council of Europe or awarded against the applicant or third party at whose request the report was drawn up or the other measure was taken. In all cases the costs shall be taxed by the President of the Chamber.

Rule 43

(Joinder and simultaneous examination of applications)

1. The Chamber may, either at the request of the parties or of its own motion, order the joinder of two or more applications.

2. The President of the Chamber may, after consulting the parties, order that the proceedings in applications assigned to the same Chamber be conducted simultaneously, without prejudice to the decision of the Chamber on the joinder of the applications.

Rule 44

(Striking out and restoration to the list)

1. When an applicant Contracting Party notifies the Registrar of its intention not to proceed with the

case, the Chamber may strike the application out of the Court's list under Article 37 of the Convention if the other Contracting Party or Parties concerned in the case agree to such discontinuance.

2. The decision to strike out an application which has been declared admissible shall be given in the form of a judgment. The President of the Chamber shall forward that judgment, once it has become final, to the Committee of Ministers in order to allow the latter to supervise, in accordance with Article 46 § 2 of the Convention, the execution of any undertakings which may have been attached to the discontinuance, friendly settlement or solution of the matter.

3. When an application has been struck out, the costs shall be at the discretion of the Court. If an award of costs is made in a decision striking out an application which has not been declared admissible, the President of the Chamber shall forward the decision to the Committee of Ministers.

4. The Court may restore an application to its list if it considers that exceptional circumstances justify such a course.

Chapter II
Institution of Proceedings

Rule 45
(Signatures)

1. Any application made under Articles 33 or 34 of the Convention shall be submitted in writing and shall be signed by the applicant or by the applicant's representative.

2. Where an application is made by a non-governmental organisation or by a group of individuals, it shall be signed by those persons competent to represent that organisation or group. The Chamber or Committee concerned shall determine any question as to whether the persons who have signed an application are competent to do so.

3. Where applicants are represented in accordance with Rule 36, a power of attorney or written authority to act shall be supplied by their representative or representatives.

Rule 46
(Contents of an inter-State application)

Any Contracting Party or Parties intending to bring a case before the Court under Article 33 of the Convention shall file with the Registry an application setting out

(a) the name of the Contracting Party against which the application is made;

(b) a statement of the facts;

(c) a statement of the alleged violation(s) of the Convention and the relevant arguments;

(d) a statement on compliance with the admissibility criteria (exhaustion of domestic remedies and the six-month rule) laid down in Article 35 § 1 of the Convention;

(e) the object of the application and a general indication of any claims for just satisfaction made under Article 41 of the Convention on behalf of the alleged injured party or parties; and

(f) the name and address of the person(s) appointed as Agent; and accompanied by

(g) copies of any relevant documents and in particular the decisions, whether judicial or not, relating to the object of the application.

Rule 47

(Contents of an individual application)

1. Any application under Article 34 of the Convention shall be made on the application form provided by the Registry, unless the President of the Section concerned decides otherwise. It shall set out

(a) the name, date of birth, nationality, sex, occupation and address of the applicant;

(b) the name, occupation and address of the representative, if any;

(c) the name of the Contracting Party or Parties against which the application is made;

(d) a succinct statement of the facts;

(e) a succinct statement of the alleged violation(s) of the Convention and the relevant arguments;

(f) a succinct statement on the applicant's compliance with the admissibility criteria (exhaustion of domestic remedies and the six-month rule) laid down in Article 35 § 1 of the Convention; and

(g) the object of the application as well as a general indication of any claims for just satisfaction which the applicant may wish to make under Article 41 of the Convention;

and be accompanied by

(h) copies of any relevant documents and in particular the decisions, whether judicial or not, relating to the object of the application.

2. Applicants shall furthermore

(a) provide information, notably the documents and decisions referred to in paragraph 1 (h) of this Rule, enabling it to be shown that the admissibility criteria (exhaustion of domestic remedies and the six-month rule) laid down in Article 35 § 1 of the Convention have been satisfied; and

(b) indicate whether they have submitted their complaints to any other procedure of international investigation or settlement.

3. Applicants who do not wish their identity to be disclosed to the public shall so indicate and shall submit a statement of the reasons justifying such a departure from the normal rule of public access to information in proceedings before the Court. The President of the Chamber may authorise anonymity in exceptional and duly justified cases.

4. Failure to comply with the requirements set out in paragraphs 1 and 2 of this Rule may result in the application not being registered and examined by the Court.

5. The date of introduction of the application shall as a general rule be considered to be the date of the first communication from the applicant setting out, even summarily, the object of the application. The Court may for good cause nevertheless decide that a different date shall be considered to be the date of introduction.

6. Applicants shall keep the Court informed of any change of address and of all circumstances relevant to the application.

Chapter III

Judge Rapporteurs

Rule 48

(Inter-State applications)

1. Where an application is made under Article 33 of the Convention, the Chamber constituted to consider the case shall designate one or more of its judges as Judge Rapporteur(s), who shall submit a report on admissibility when the written observations of the Contracting Parties concerned have been received. Rule 49 § 4 shall, in so far as appropriate, be applicable to this report.

2. After an application made under Article 33 of the Convention has been declared admissible, the Judge Rapporteur(s) shall submit such reports, drafts and other documents as may assist the Chamber in the carrying out of its functions.

Rule 49

(Individual applications)

1. Where an application is made under Article 34 of the Convention, the President of the Section to which the case has been assigned shall designate a judge as Judge Rapporteur, who shall examine the application.

2. In their examination of applications Judge Rapporteurs

(a) may request the parties to submit, within a specified time, any factual information, documents or other material which they consider to be relevant;

(b) shall, subject to the President of the Section directing that the case be considered by a Chamber, decide whether the application is to be considered by a Committee or by a Chamber.

3. Where a case is considered by a Committee in accordance with Article 28 of the Convention, the report of the Judge Rapporteur shall contain

(a) a brief statement of the relevant facts;

(b) a brief statement of the reasons underlying the proposal to declare the application inadmissible or to strike it out of the list.

4. Where a case is considered by a Chamber pursuant to Article 29 § 1 of the Convention, the report of the Judge Rapporteur shall contain

(a) a statement of the relevant facts, including any information obtained under paragraph 2 of this Rule;

(b) an indication of the issues arising under the Convention in the application;

(c) a proposal on admissibility and on any other action to be taken, together, if need be, with a provisional opinion on the merits.

5. After an application made under Article 34 of the Convention has been declared admissible, the Judge Rapporteur shall submit such reports, drafts and other documents as may assist the Chamber in the carrying out of its functions.

Rule 50

(Grand Chamber proceedings)

Where a case has been submitted to the Grand Chamber either under Article 30 or under Article 43 of the Convention, the President of the Grand Chamber shall designate as Judge Rapporteur(s) one or, in the case of an inter-State application, one or more of its members.

Chapter IV
Proceedings on Admissibility

Inter-State applications

Rule 51

1. When an application is made under Article 33 of the Convention, the President of the Court shall immediately give notice of the application to the respondent Contracting Party and shall assign the application to one of the Sections.
2. In accordance with Rule 26 § 1 (a), the judges elected in respect of the applicant and respondent Contracting Parties shall sit as *ex officio* members of the Chamber constituted to consider the case. Rule 30 shall apply if the application has been brought by several Contracting Parties or if applications with the same object brought by several Contracting Parties are being examined jointly under Rule 43 § 2.
3. On assignment of the case to a Section, the President of the Section shall constitute the Chamber in accordance with Rule 26 § 1 and shall invite the respondent Contracting Party to submit its observations in writing on the admissibility of the application. The observations so obtained shall be communicated by the Registrar to the applicant Contracting Party, which may submit written observations in reply.
4. Before ruling on the admissibility of the application, the Chamber may decide to invite the Parties to submit further observations in writing.
5. A hearing on the admissibility shall be held if one or more of the Contracting Parties concerned so requests or if the Chamber so decides of its own motion.
6. After consulting the Parties, the President of the Chamber shall fix the written and, where appropriate, oral procedure and for that purpose shall lay down the time-limit within which any written observations are to be filed.
7. In its deliberations the Chamber shall take into consideration the report submitted by the Judge Rapporteur(s) under Rule 48 § 1.

Individual applications

Rule 52

(Assignment of applications to the Sections)

1. Any application made under Article 34 of the Convention shall be assigned to a Section by the President of the Court, who in so doing shall endeavour to ensure a fair distribution of cases between

the Sections.

2. The Chamber of seven judges provided for in Article 27 § 1 of the Convention shall be constituted by the President of the Section concerned in accordance with Rule 26 § 1 once it has been decided that the application is to be considered by a Chamber.

3. Pending the constitution of a Chamber in accordance with paragraph 2 of this Rule, the President of the Section shall exercise any powers conferred on the President of the Chamber by these Rules.

Rule 53

(Procedure before a Committee)

1. In its deliberations the Committee shall take into consideration the report submitted by the Judge Rapporteur under Rule 49 § 3.

2. The Judge Rapporteur, if he or she is not a member of the Committee, may be invited to attend the deliberations of the Committee.

3. In accordance with Article 28 of the Convention, the Committee may, by a unanimous vote, declare inadmissible or strike out of the Court's list of cases an application where such a decision can be taken without further examination. This decision shall be final.

4. If no decision pursuant to paragraph 3 of this Rule is taken, the application shall be forwarded to the Chamber constituted under Rule 52 § 2 to examine the case.

Rule 54

(Procedure before a Chamber)

1. In its deliberations the Chamber shall take into consideration the report submitted by the Judge Rapporteur under Rule 49 § 4.

2. The Chamber may at once declare the application inadmissible or strike it out of the Court's list of cases.

3. Alternatively, the Chamber may decide to

(a) request the parties to submit any factual information, documents or other material which it considers to be relevant;

(b) give notice of the application to the respondent Contracting Party and invite that Party to submit written observations on the application;

(c) invite the parties to submit further observations in writing.

4. Before taking its decision on admissibility, the Chamber may decide, either at the request of the parties or of its own motion, to hold a hearing. In that event, unless the Chamber shall exceptionally decide otherwise, the parties shall be invited also to address the issues arising in relation to the merits of the application.

5. The President of the Chamber shall fix the procedure, including time-limits, in relation to any decisions taken by the Chamber under paragraphs 3 and 4 of this Rule.

Inter-State and individual applications

Rule 55

(Pleas of inadmissibility)

Any plea of inadmissibility must, in so far as its character and the circumstances permit, be raised by the respondent Contracting Party in its written or oral observations on the admissibility of the application submitted as provided in Rule 51 or 54, as the case may be.

Rule 56

(Decision of a Chamber)

1. The decision of the Chamber shall state whether it was taken unanimously or by a majority and shall be accompanied or followed by reasons.

2. The decision of the Chamber shall be communicated by the Registrar to the applicant and to the Contracting Party or Parties concerned.

Rule 57

(Language of the decision)

1. Unless the Court decides that a decision shall be given in both official languages, all decisions shall be given either in English or in French. Decisions given shall be accessible to the public.

2. Publication of such decisions in the official reports of the Court, as provided for in Rule 78, shall be in both official languages of the Court.

Chapter V

Proceedings after the Admission of an Application

Rule 58

(Inter-State applications)

1. Once the Chamber has decided to admit an application made under Article 33 of the Convention, the President of the Chamber shall, after consulting the Contracting Parties concerned, lay down the time-limits for the filing of written observations on the merits and for the production of any further evidence. The President may however, with the agreement of the Contracting Parties concerned, direct that a written procedure is to be dispensed with.

2. A hearing on the merits shall be held if one or more of the Contracting Parties concerned so requests or if the Chamber so decides of its own motion. The President of the Chamber shall fix the oral procedure.

3. In its deliberations the Chamber shall take into consideration any reports, drafts and other documents submitted by the Judge Rapporteur(s) under Rule 48 § 2.

Rule 59

(Individual applications)

1. Once the Chamber has decided to admit an application made under Article 34 of the Convention, it may invite the parties to submit further evidence and written observations.

2. A hearing on the merits shall be held if the Chamber so decides of its own motion or, provided that no hearing also addressing the merits has been held at the admissibility stage under Rule 54 § 4, if one of the parties so requests. However, the Chamber may exceptionally decide that the discharging of its functions under Article 38 § 1 (a) of the Convention does not require a hearing to be held.

3. The President of the Chamber shall, where appropriate, fix the written and oral procedure.

4. In its deliberations the Chamber shall take into consideration any reports, drafts and other documents submitted by the Judge Rapporteur under Rule 49 § 5.

Rule 60

(Claims for just satisfaction)

1. Any claim which the applicant Contracting Party or the applicant may wish to make for just satisfaction under Article 41 of the Convention shall, unless the President of the Chamber directs otherwise, be set out in the written observations on the merits or, if no such written observations are filed, in a special document filed no later than two months after the decision declaring the application admissible.

2. Itemised particulars of all claims made, together with the relevant supporting documents or vouchers, shall be submitted, failing which the Chamber may reject the claim in whole or in part.

3. The Chamber may, at any time during the proceedings, invite any party to submit comments on the claim for just satisfaction.

Rule 61

(Third-party intervention)

1. The decision declaring an application admissible shall be notified by the Registrar to any Contracting Party one of whose nationals is an applicant in the case, as well as to the respondent Contracting Party or Parties under Rule 56 § 2.

2. Where a Contracting Party seeks to exercise its right to submit written comments or to take part in a hearing, pursuant to Article 36 § 1 of the Convention, the President of the Chamber shall fix the procedure to be followed.

3. In accordance with Article 36 § 2 of the Convention, the President of the Chamber may, in the interests of the proper administration of justice, invite or grant leave to any Contracting State which is not a party to the proceedings, or any person concerned who is not the applicant, to submit written comments or, in exceptional cases, to take part in a hearing. Requests for leave for this purpose must be duly reasoned and submitted in one of the official languages, within a reasonable time after the fixing of the written procedure.

4. Any invitation or grant of leave referred to in paragraph 3 of this Rule shall be subject to any conditions, including time-limits, set by the President of the Chamber. Where such conditions are not complied with, the President may decide not to include the comments in the case file.

5. Written comments submitted in accordance with this Rule shall be submitted in one of the official languages, save where leave to use another language has been granted under Rule 34 § 4. They shall be transmitted by the Registrar to the parties to the case, who shall be entitled, subject to any

conditions, including time-limits, set by the President of the Chamber, to file written observations in reply.

Rule 62

(Friendly settlement)

1. Once an application has been declared admissible, the Registrar, acting on the instructions of the Chamber or its President, shall enter into contact with the parties with a view to securing a friendly settlement of the matter in accordance with Article 38 § 1 (b) of the Convention. The Chamber shall take any steps that appear appropriate to facilitate such a settlement.
2. In accordance with Article 38 § 2 of the Convention, the friendly-settlement negotiations shall be confidential and without prejudice to the parties' arguments in the contentious proceedings. No written or oral communication and no offer or concession made in the framework of the attempt to secure a friendly settlement may be referred to or relied on in the contentious proceedings.
3. If the Chamber is informed by the Registrar that the parties have agreed to a friendly settlement, it shall, after verifying that the settlement has been reached on the basis of respect for human rights as defined in the Convention and the Protocols thereto, strike the case out of the Court's list in accordance with Rule 44 § 2.

Chapter VI
Hearings
Rule 63
(Conduct of hearings)

1. The President of the Chamber shall direct hearings and shall prescribe the order in which Agents and advocates or advisers of the parties shall be called upon to speak.
2. Where a fact-finding hearing is being carried out by a delegation of the Chamber under Rule 42, the head of the delegation shall conduct the hearing and the delegation shall exercise any relevant power conferred on the Chamber by the Convention or these Rules.

Rule 64

(Failure to appear at a hearing)

Where, without showing sufficient cause, a party fails to appear, the Chamber may, provided that it is satisfied that such a course is consistent with the proper administration of justice, nonetheless proceed with the hearing.

Rule 65

(Convocation of witnesses, experts and other persons; costs of their appearance)

1. Witnesses, experts and other persons whom the Chamber or the President of the Chamber decides to hear shall be summoned by the Registrar.
2. The summons shall indicate
(a) the case in connection with which it has been issued;

(b) the object of the inquiry, expert opinion or other measure ordered by the Chamber or the President of the Chamber;

(c) any provisions for the payment of the sum due to the person summoned.

3. If the persons concerned appear at the request or on behalf of an applicant or respondent Contracting Party, the costs of their appearance shall be borne by that Party unless the Chamber decides otherwise. In other cases, the Chamber shall decide whether such costs are to be borne by the Council of Europe or awarded against the applicant or third party at whose request the person summoned appeared. In all cases the costs shall be taxed by the President of the Chamber.

Rule 66

(Oath or solemn declaration by witnesses and experts)

1. After the establishment of the identity of the witness and before testifying, every witness shall take the following oath or make the following solemn declaration:

"I swear" – or "I solemnly declare upon my honour and conscience" – "that I shall speak the truth, the whole truth and nothing but the truth."

This act shall be recorded in minutes.

2. After the establishment of the identity of the expert and before carrying out his or her task, every expert shall take the following oath or make the following solemn declaration:

"I swear" – or "I solemnly declare" – "that I will discharge my duty as an expert honourably and conscientiously."

This act shall be recorded in minutes.

3. This oath may be taken or this declaration made before the President of the Chamber, or before a judge or any public authority nominated by the President.

Rule 67

(Objection to a witness or expert; hearing of a person for information purposes)

The Chamber shall decide in the event of any dispute arising from an objection to a witness or expert. It may hear for information purposes a person who cannot be heard as a witness.

Rule 68

(Questions put during hearings)

1. Any judge may put questions to the Agents, advocates or advisers of the parties, to the applicant, witnesses and experts, and to any other persons appearing before the Chamber.

2. The witnesses, experts and other persons referred to in Rule 42 § 1 may, subject to the control of the President of the Chamber, be examined by the Agents and advocates or advisers of the parties. In the event of an objection as to the relevance of a question put, the President of the Chamber shall decide.

Rule 69

(Failure to appear, refusal to give evidence or false evidence)

If, without good reason, a witness or any other person who has been duly summoned fails to appear or refuses to give evidence, the Registrar shall, on being so required by the President of the Chamber,

inform the Contracting Party to whose jurisdiction the witness or other person is subject. The same provisions shall apply if a witness or expert has, in the opinion of the Chamber, violated the oath or solemn declaration provided for in Rule 66.

Rule 70

(Verbatim record of hearings)

1. The Registrar shall, if the Chamber so directs, be responsible for the making of a verbatim record of a hearing. The verbatim record shall include

(a) the composition of the Chamber at the hearing;

(b) a list of those appearing before the Court, that is to say Agents, advocates and advisers of the parties and any third party taking part;

(c) the surname, forenames, description and address of each witness, expert or other person heard;

(d) the text of statements made, questions put and replies given;

(e) the text of any decision delivered during the hearing by the Chamber or the President of the Chamber.

2. If all or part of the verbatim record is in a non-official language, the Registrar shall, if the Chamber so directs, arrange for its translation into one of the official languages.

3. The representatives of the parties shall receive a copy of the verbatim record in order that they may, subject to the control of the Registrar or the President of the Chamber, make corrections, but in no case may such corrections affect the sense and bearing of what was said. The Registrar shall lay down, in accordance with the instructions of the President of the Chamber, the time-limits granted for this purpose.

4. The verbatim record, once so corrected, shall be signed by the President and the Registrar and shall then constitute certified matters of record.

Chapter VII
Proceedings before the Grand Chamber

Rule 71

(Applicability of procedural provisions)

Any provisions governing proceedings before the Chambers shall apply, *mutatis mutandis*, to proceedings before the Grand Chamber.

Rule 72

(Relinquishment of jurisdiction by a Chamber in favour of the Grand Chamber)

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

paragraph 2 of this Rule. Reasons need not be given for the decision to relinquish.

2. The Registrar shall notify the parties of the Chamber's intention to relinquish jurisdiction. The parties shall have one month from the date of that notification within which to file at the Registry a duly reasoned objection. An objection which does not fulfil these conditions shall be considered invalid by the Chamber.

Rule 73

(Request by a party for referral of a case to the Grand Chamber)

1. In accordance with Article 43 of the Convention, any party to a case may exceptionally, within a period of three months from the date of delivery of the judgment of a Chamber, file in writing at the Registry a request that the case be referred to the Grand Chamber. The party shall specify in its request the serious question affecting the interpretation or application of the Convention or the Protocols thereto, or the serious issue of general importance, which in its view warrants consideration by the Grand Chamber.

2. A panel of five judges of the Grand Chamber constituted in accordance with Rule 24 § 6 shall examine the request solely on the basis of the existing case file. It shall accept the request only if it considers that the case does raise such a question or issue. Reasons need not be given for a refusal of the request.

3. If the panel accepts the request, the Grand Chamber shall decide the case by means of a judgment.

Chapter VIII
Judgments

Rule 74

(Contents of the judgment)

1. A judgment as referred to in Articles 42 and 44 of the Convention shall contain

(a) the names of the President and the other judges constituting the Chamber concerned, and the name of the Registrar or the Deputy Registrar;

(b) the dates on which it was adopted and delivered;

(c) a description of the parties;

(d) the names of the Agents, advocates or advisers of the parties;

(e) an account of the procedure followed;

(f) the facts of the case;

(g) a summary of the submissions of the parties;

(h) the reasons in point of law;

(i) the operative provisions;

(j) the decision, if any, in respect of costs;

(k) the number of judges constituting the majority;

(l) where appropriate, a statement as to which text is authentic.

2. Any judge who has taken part in the consideration of the case shall be entitled to annex to the judgment either a separate opinion, concurring with or dissenting from that judgment, or a bare statement of dissent.

Rule 75

(Ruling on just satisfaction)

1. Where the Chamber finds that there has been a violation of the Convention or the Protocols thereto, it shall give in the same judgment a ruling on the application of Article 41 of the Convention if that question, after being raised in accordance with Rule 60, is ready for decision; if the question is not ready for decision, the Chamber shall reserve it in whole or in part and shall fix the further procedure.
2. For the purposes of ruling on the application of Article 41 of the Convention, the Chamber shall, as far as possible, be composed of those judges who sat to consider the merits of the case. Where it is not possible to constitute the original Chamber, the President of the Court shall complete or compose the Chamber by drawing lots.
3. The Chamber may, when affording just satisfaction under Article 41 of the Convention, direct that if settlement is not made within a specified time, interest is to be payable on any sums awarded.
4. If the Court is informed that an agreement has been reached between the injured party and the Contracting Party liable, it shall verify the equitable nature of the agreement and, where it finds the agreement to be equitable, strike the case out of the list in accordance with Rule 44 § 2.

Rule 76

(Language of the judgment)

1. Unless the Court decides that a judgment shall be given in both official languages, all judgments shall be given either in English or in French. Judgments given shall be accessible to the public.
2. Publication of such judgments in the official reports of the Court, as provided for in Rule 78, shall be in both official languages of the Court.

Rule 77

(Signature, delivery and notification of the judgment)

1. Judgments shall be signed by the President of the Chamber and the Registrar.
2. The judgment may be read out at a public hearing by the President of the Chamber or by another judge delegated by him or her. The Agents and representatives of the parties shall be informed in due time of the date of the hearing. Otherwise the notification provided for in paragraph 3 of this Rule shall constitute delivery of the judgment.
3. The judgment shall be transmitted to the Committee of Ministers. The Registrar shall send certified copies to the parties, to the Secretary General of the Council of Europe, to any third party and to any other person directly concerned. The original copy, duly signed and sealed, shall be placed in the archives of the Court.

Rule 78

(Publication of judgments and other documents)

In accordance with Article 44 § 3 of the Convention, final judgments of the Court shall be published,

under the responsibility of the Registrar, in an appropriate form. The Registrar shall in addition be responsible for the publication of official reports of selected judgments and decisions and of any document which the President of the Court considers it useful to publish.

Rule 79

(Request for interpretation of a judgment)

1. A party may request the interpretation of a judgment within a period of one year following the delivery of that judgment.
2. The request shall be filed with the Registry. It shall state precisely the point or points in the operative provisions of the judgment on which interpretation is required.
3. The original Chamber may decide of its own motion to refuse the request on the ground that there is no reason to warrant considering it. Where it is not possible to constitute the original Chamber, the President of the Court shall complete or compose the Chamber by drawing lots.
4. If the Chamber does not refuse the request, the Registrar shall communicate it to the other party or parties and shall invite them to submit any written comments within a time-limit laid down by the President of the Chamber. The President of the Chamber shall also fix the date of the hearing should the Chamber decide to hold one. The Chamber shall decide by means of a judgment.

Rule 80

(Request for revision of a judgment)

1. A party may, in the event of the discovery of a fact which might by its nature have a decisive influence and which, when a judgment was delivered, was unknown to the Court and could not reasonably have been known to that party, request the Court, within a period of six months after that party acquired knowledge of the fact, to revise that judgment.
2. The request shall mention the judgment of which revision is requested and shall contain the information necessary to show that the conditions laid down in paragraph 1 of this Rule have been complied with. It shall be accompanied by a copy of all supporting documents. The request and supporting documents shall be filed with the Registry.
3. The original Chamber may decide of its own motion to refuse the request on the ground that there is no reason to warrant considering it. Where it is not possible to constitute the original Chamber, the President of the Court shall complete or compose the Chamber by drawing lots.
4. If the Chamber does not refuse the request, the Registrar shall communicate it to the other party or parties and shall invite them to submit any written comments within a time-limit laid down by the President of the Chamber. The President of the Chamber shall also fix the date of the hearing should the Chamber decide to hold one. The Chamber shall decide by means of a judgment.

Rule 81

(Rectification of errors in decisions and judgments)

Without prejudice to the provisions on revision of judgments and on restoration to the list of applications, the Court may, of its own motion or at the request of a party made within one month of the delivery of a decision or a judgment, rectify clerical errors, errors in calculation or obvious

mistakes.

Chapter IX
Advisory Opinions

Rule 82

In proceedings relating to advisory opinions the Court shall apply, in addition to the provisions of Articles 47, 48 and 49 of the Convention, the provisions which follow. It shall also apply the other provisions of these Rules to the extent to which it considers this to be appropriate.

Rule 83

The request for an advisory opinion shall be filed with the Registry. It shall state fully and precisely the question on which the opinion of the Court is sought, and also

(a) the date on which the Committee of Ministers adopted the decision referred to in Article 47 § 3 of the Convention;

(b) the names and addresses of the person or persons appointed by the Committee of Ministers to give the Court any explanations which it may require.

The request shall be accompanied by all documents likely to elucidate the question.

Rule 84

1. On receipt of a request, the Registrar shall transmit a copy of it to all members of the Court.

2. The Registrar shall inform the Contracting Parties that the Court is prepared to receive their written comments.

Rule 85

1. The President of the Court shall lay down the time-limits for filing written comments or other documents.

2. Written comments or other documents shall be filed with the Registry. The Registrar shall transmit copies of them to all the members of the Court, to the Committee of Ministers and to each of the Contracting Parties.

Rule 86

After the close of the written procedure, the President of the Court shall decide whether the Contracting Parties which have submitted written comments are to be given an opportunity to develop them at a hearing held for the purpose.

Rule 87

If the Court considers that the request for an advisory opinion is not within its consultative competence as defined in Article 47 of the Convention, it shall so declare in a reasoned decision.

Rule 88

1. Advisory opinions shall be given by a majority vote of the Grand Chamber. They shall mention the number of judges constituting the majority.

2. Any judge may, if he or she so desires, attach to the opinion of the Court either a separate opinion, concurring with or dissenting from the advisory opinion, or a bare statement of dissent.

Rule 89

The advisory opinion shall be read out in one of the two official languages by the President of the Court, or by another judge delegated by the President, at a public hearing, prior notice having been given to the Committee of Ministers and to each of the Contracting Parties.

Rule 90

The opinion, or any decision given under Rule 87, shall be signed by the President of the Court and by the Registrar. The original copy, duly signed and sealed, shall be placed in the archives of the Court. The Registrar shall send certified copies to the Committee of Ministers, to the Contracting Parties and to the Secretary General of the Council of Europe.

Chapter X
Legal Aid

Rule 91

1. The President of the Chamber may, either at the request of an applicant having lodged an application under Article 34 of the Convention or of his or her own motion, grant free legal aid to the applicant in connection with the presentation of the case from the moment when observations in writing on the admissibility of that application are received from the respondent Contracting Party in accordance with Rule 54 § 3 (b), or where the time-limit for their submission has expired.

2. Subject to Rule 96, where the applicant has been granted legal aid in connection with the presentation of his or her case before the Chamber, that grant shall continue in force for the purposes of his or her representation before the Grand Chamber.

Rule 92

Legal aid shall be granted only where the President of the Chamber is satisfied

(a) that it is necessary for the proper conduct of the case before the Chamber;

(b) that the applicant has insufficient means to meet all or part of the costs entailed.

Rule 93

1. In order to determine whether or not applicants have sufficient means to meet all or part of the costs entailed, they shall be required to complete a form of declaration stating their income, capital assets and any financial commitments in respect of dependants, or any other financial obligations. The declaration shall be certified by the appropriate domestic authority or authorities.

2. The Contracting Party concerned shall be requested to submit its comments in writing.

3. After receiving the information mentioned in paragraphs 1 and 2 of this Rule, the President of the Chamber shall decide whether or not to grant legal aid. The Registrar shall inform the parties accordingly.

Rule 94

1. Fees shall be payable to the advocates or other persons appointed in accordance with Rule 36 § 4. Fees may, where appropriate, be paid to more than one such representative.

2. Legal aid may be granted to cover not only representatives' fees but also travelling and subsistence

expenses and other necessary expenses incurred by the applicant or appointed representative.

Rule 95

On a decision to grant legal aid, the Registrar shall fix

(a) the rate of fees to be paid in accordance with the legal-aid scales in force;

(b) the level of expenses to be paid.

Rule 96

The President of the Chamber may, if satisfied that the conditions stated in Rule 92 are no longer fulfilled, revoke or vary a grant of legal aid at any time.

TITLE III

TRANSITIONAL RULES

Rule 97

(Judges' terms of office)

The duration of the terms of office of the judges who were members of the Court at the date of the entry into force of Protocol No. 11 to the Convention shall be calculated as from that date.

Rule 98

(Presidency of the Sections)

For a period of three years from the entry into force of Protocol No. 11 to the Convention,

(a) the two Presidents of Sections who are not simultaneously Vice-Presidents of the Court and the Vice-Presidents of the Sections shall be elected for a term of office of eighteen months;

(b) the Vice-Presidents of the Sections may not be immediately re-elected.

Rule 99

(Relations between the Court and the Commission)

1. In cases brought before the Court under Article 5 §§ 4 and 5 of Protocol No. 11 to the Convention the Court may invite the Commission to delegate one or more of its members to take part in the consideration of the case before the Court.

2. In cases referred to in paragraph 1 of this Rule the Court shall take into consideration the report of the Commission adopted pursuant to former Article 31 of the Convention.

3. Unless the President of the Chamber decides otherwise, the said report shall be made available to the public through the Registrar as soon as possible after the case has been brought before the Court.

4. The remainder of the case file of the Commission, including all pleadings, in cases brought before the Court under Article 5 §§ 2 to 5 of Protocol No. 11 shall remain confidential unless the President of the Chamber decides otherwise.

5. In cases where the Commission has taken evidence but has been unable to adopt a report in accordance with former Article 31 of the Convention, the Court shall take into consideration the verbatim records, documentation and opinion of the Commission's delegations arising from such investigations.

Rule 100

(Chamber and Grand Chamber proceedings)

1. In cases referred to the Court under Article 5 § 4 of Protocol No. 11 to the Convention, a panel of the Grand Chamber constituted in accordance with Rule 24 § 6 shall determine, solely on the basis of the existing case file, whether a Chamber or the Grand Chamber is to decide the case.

2. If the case is decided by a Chamber, the judgment of the Chamber shall, in accordance with Article 5 § 4 of Protocol No. 11, be final and Rule 73 shall be inapplicable.

3. Cases transmitted to the Court under Article 5 § 5 of Protocol No. 11 shall be forwarded by the President of the Court to the Grand Chamber.

4. For each case transmitted to the Grand Chamber under Article 5 § 5 of Protocol No. 11, the Grand Chamber shall be completed by judges designated by rotation within one of the groups mentioned in

Rule 24 § 3, the cases being allocated to the groups on an alternate basis.

Rule 101

(Grant of legal aid)

Subject to Rule 96, in cases brought before the Court under Article 5 §§ 2 to 5 of Protocol No.11 to the Convention, a grant of legal aid made to an applicant in the proceedings before the Commission or the former Court shall continue in force for the purposes of his or her representation before the Court.

Rule 102

(Request for interpretation or revision of a judgment)

1. Where a party requests interpretation or revision of a judgment delivered by the former Court, the President of the Court shall assign the request to one of the Sections in accordance with the conditions laid down in Rule 51 or 52, as the case may be.

2. The President of the relevant Section shall, notwithstanding Rules 79 § 3 and 80 § 3, constitute a new Chamber to consider the request.

3. The Chamber to be constituted shall include as *ex officio* members

(a) the President of the Section;

and, whether or not they are members of the relevant Section,

(b) the judge elected in respect of any Contracting Party concerned or, if he or she is unable to sit, any judge appointed under Rule 29;

(c) any judge of the Court who was a member of the original Chamber that delivered the judgment in the former Court.

4. (a) The other members of the Chamber shall be designated by the President of the Section by means of a drawing of lots from among the members of the relevant Section.

(b) The members of the Section who are not so designated shall sit in the case as substitute judges.

TITLE IV

FINAL CLAUSES

Rule 103

(Amendment or suspension of a Rule)

1. Any Rule may be amended upon a motion made after notice where such a motion is carried at the next session of the plenary Court by a majority of all the members of the Court. Notice of such a motion shall be delivered in writing to the Registrar at least one month before the session at which it is to be discussed. On receipt of such a notice of motion, the Registrar shall inform all members of the Court at the earliest possible moment.

2. A Rule relating to the internal working of the Court may be suspended upon a motion made without notice, provided that this decision is taken unanimously by the Chamber concerned. The suspension of a Rule shall in this case be limited in its operation to the particular purpose for which it was sought.

Rule 104

(Entry into force of the Rules)

The present Rules shall enter into force on 1 November 1998.

FORMULAR ZAHTJEVA – Europski sud za ljudska prava

Voir Note explicative

See Explanatory Note

Vidi Uputu (CRO)

COUR EUROPÉENNE DES DROITS DE L.HOMME

EUROPEAN COURT OF HUMAN RIGHTS

EUROPSKI SUD ZA LJUDSKA PRAVA

Conseil de l.Europe - *Council of Europe* - **Vijeće Europe**

Strasbourg, France - ***Strasbourg, Francuska***

REQUÊTE

APPLICATION

ZAHTJEV

présentée en application de l.article 34 de la Convention européenne des Droits de l.Homme,
ainsi que des articles 45 et 47 du Règlement de la Cour

under Article 34 of the European Convention on Human Rights
and Rules 45 and 47 of the Rules of Court

na temelju članka 34. Europske konvencije o ljudskim pravima
i pravila 45. i 47. Poslovnika Suda

IMPORTANT: La présente requête est un document juridique et peut affecter vos droits et obligations.

This application is a formal legal document and may affect your rights and obligations.

VAŽNO: Ovaj zahtjev je pravni dokument i može utjecati na Vaša prava i obveze.

I - LES PARTIES / *THE PARTIES* / *STRANKE*

A. LE REQUÉRANT/LA REQUÉRANTE

THE APPLICANT

PODNOSITELJ / PODNOSITELJICA

(Renseignements à fournir concernant le/la requérant(e) et son/sa représentant(e) éventuel(le))

(Fill in the following details of the applicant and the representative, if any)

(Upišite podatke podnositelja / podnositeljice i eventualno zastupnika / zastupnice)

1. Nom de famille ..... . 2. Prénom (s) ....

*Surname / **Prezime*** *First name (s) / **Ime*** .....

Sexe: masculin/féminin *Sex: male/female* ***Spol: muški / ženski***

3. Nationalité ..... 4. Profession .....

*Nationality / **Državljanstvo***…….. *Occupation / **Zanimanje*** …….

5. Date et lieu de naissance .....

*Date and place of birth / **Datum i mjesto rođenja***

6. Domicile .....

*Permanent address / **Stalna adresa***

7. Tel. No. / ***Broj telefona*** .....

8. Adresse actuelle (si différente de 6.) .....

Present address (if different from 6.)

Trenutačna adresa (ako drukčija nego u toč. 6)

9. Nom et prénom du/de la représentant(e)* .....

*Name of representative**

Prezime i ime zastupnika / zastupnice*

10. Profession du/de la représentant*(e)* .....

Occupation of representative

Zanimanje zastupnika / zastupnice

11. Adresse du/de la représentant(e) .....

Address of representative

Adresa zastupnika / zastupnice

12. Tel. N°/ ***Broj telefona*** .....Fax No. / ***Broj telefaksa*** .....

B. LA HAUTE PARTIE CONTRACTANTE / THE HIGH CONTRACTING PARTY

VISOKA UGOVORNA STRANKA

(Indiquer ci-après le nom de l.Etat/des Etats contre le(s)quel(s) la requête est dirigée)

(Fill in the name of the State(s) against which the application is directed)

(Navedite ime tužene države / tuženih država)

13. .....

_____

* Si le/la requérant(e) est représenté(e), joindre une procuration signée par le/la requérant(e) en faveur du/de la représentant(e).

A form of authority signed by the applicant should be submitted if a representative is appointed.

Priložiti punomoć ako podnositelj / podnositeljica ima zastupnika / zastupnicu.

II - EXPOSÉ DES FAITS

STATEMENT OF THE FACTS

OPIS ČINJENICA

(Voir chapitre II de la note explicative)

(See Part II of the Explanatory Note)

(Vidi dio II . Upute)

14.

Si nécessaire, continuer sur une feuille séparée

Continue on a separate sheet if necessary

Ako je potrebno, nastavite na posebnom listu

III - EXPOSÉ DE LA OU DES VIOLATION(S) DE LA CONVENTION ET/OU DES PROTOCOLES ALLÉGUÉE(S), AINSI QUE DES ARGUMENTS À L.APPUI

STATEMENT OF ALLEGED VIOLATION(S) OF THE CONVENTION AND/OR PROTOCOLS AND OF RELEVANT ARGUMENTS

IZJAVA O NAVODNIM POVREDAMA ODREDABA KONVENCIJE I/ILI PROTOKOLA I O RELEVANTNIM ARGUMENTIMA

(Voir chapitre III de la note explicative)

(See Part III of the Explanatory Note)

(Vidi dio III. Upute)

15.

IV - EXPOSÉ RELATIF AUX PRESCRIPTIONS DE L.ARTICLE 35 § 1 DE LA CONVENTION

STATEMENT RELATIVE TO ARTICLE 35 § 1 OF THE CONVENTION

IZJAVA KOJA SE ODNOSI NA STAVAK 1. ČLANKA 35. KONVENCIJE

(Voir chapitre IV de la note explicative. Donner pour chaque grief, et au besoin sur une feuille séparée, les renseignements demandés sous les points 16 à 18 ci-après)

(See Part IV of the Explanatory Note. If necessary, give the details mentioned below under points 16 to 18 on a separate sheet for each separate complaint)

(Vidi dio IV. Upute. Ako je potrebno, napišite podatke koji se zahtijevaju u točkama 16. do 18. na posebnom listu za svaku žalbu zasebno)

16. Décision interne définitive (date et nature de la décision, organe - judiciaire ou autre . l.ayant rendue)

Final decision (date, court or authority and nature of decision)

Konačna odluka (datum i priroda odluke, sud ili drugi organ koji ju je donio)

17. Autres décisions (énumérées dans l.ordre chronologique en indiquant, pour chaque décision, sa date, sa nature etl.organe - judiciaire ou autre . l.ayant rendue)

Other decisions (list in chronological order, giving date, court or authority and nature of decision for each of them)

Druge odluke (upišite ih kronološkim redom; za svaku odluku upišite datum, sud ili drugi organ koji je odluku donio i njenu prirodu)

18. Dispos(i)ez-vous d.un recours que vous n'avez pas exercé? Si oui, lequel et pour quel motif n.a-t-il pas été exercé?

Is there or was there any other appeal or other remedy available to you which you have not used? If so, explain why you have not used it.

Postoji li ili je postojalo još koje pravno sredstvo kojim se niste poslužili? Ako postoji, pojasnite koje i iz kojeg se razloga niste njime poslužili.

Si nécessaire, continuer sur une feuille séparée

Continue on a separate sheet if necessary

Ako je potrebno, nastavite na posebnom listu

V - EXPOSÉ DE L'OBJET DE LA REQUÊTE

STATEMENT OF THE OBJECT OF THE APPLICATION

IZJAVA O PREDMETU ZAHTJEVA

(Voir chapitre V de la note explicative)

(See Part V of the Explanatory Note)

(Vidi dio V. Upute)

19.

VI - AUTRES INSTANCES INTERNATIONALES TRAITANT OU AYANT TRAITÉ L.AFFAIRE

STATEMENT CONCERNING OTHER INTERNATIONAL PROCEEDINGS

IZJAVA O DRUGIM MEĐUNARODNIM POSTUPCIMA

(Voir chapitre VI de la note explicative)

(See Part VI of the Explanatory Note)

(Vidi dio VI. Upute)

20. Avez-vous soumis à une autre instance internationale d.enquête ou de règlement les griefs énoncés dans la présente requête? Si oui, fournir des indications détaillées à ce sujet.

Have you submitted the above complaints to any other procedure of international investigation or settlement? If so, give full details.

Jeste li ovaj zahtjev već podnijeli u nekom drugom postupku međunarodne istrage ili rješavanja? Ako jeste, navedite sve podatke.

VII - PIÈCES ANNEXÉES **(PAS D'ORIGINAUX, UNIQUEMENT DES COPIES)**

LIST OF DOCUMENTS ***(NO ORIGINAL DOCUMENTS, ONLY PHOTOCOPIES)***

PRIVITAK (BEZ ORIGINALA, SAMO KOPIJE)

(Voir chapitre VII de la note explicative. Joindre copie de toutes les décisions mentionnées sous ch. IV et VI ci-dessus. Se procurer, au besoin, les copies nécessaires, et, en cas d.impossibilité, expliquer pourquoi celles-ci ne peuvent pas être obtenues. Ces documents ne vous seront pas retournés.)

(See Part VII of the Explanatory Note. Include copies of all decisions referred to in Parts IV and VI above. If you do not have copies, you should obtain them. If you cannot obtain them, explain why not. No documents will be returned to you.)

(Vidi dio VII. Priložite kopije svih odluka spomenutih u dijelu IV. i VI. Ako nemate kopija, pribavite ih. Ako ih ne možete pribaviti, objasnite razloge. Dokumenti vam neće biti vraćeni)

2 1 .

a).....

b).....

c).....

VIII - DÉCLARATION ET SIGNATURE

DECLARATION AND SIGNATURE

IZJAVA IN POTPIS

(Voir chapitre VIII de la note explicative)

(See Part VIII of the Explanatory Note)

(Vidi dio VIII. Upute)

22. Je déclare en toute conscience et loyauté que les renseignements qui figurent sur la présente formule de requête sont exacts.

I hereby declare that, to the best of my knowledge and belief, the information I have given in the present application form is correct.

Izjavljujem da su po mojoj savjesti i uvjerenju svi podaci u ovom zahtjevu točni.

Lieu/*Place*/***Mjesto*** .....

Date/*Date*/***Datum*** .....

(Signature du/de la requérant(e) ou du/de la représentant(e))

(Signature of the applicant or of the representative)

(Potpis podnositelja / podnositeljice ili zastupnika / zastupnice)

UPUTA ZA ISPUNJAVANJE ZAHTJEVA PREMA ČLANKU 34. KONVENCIJE ZA ZAŠTITU LJUDSKIH PRAVA I TEMELJNIH SLOBODA

Uvod

Ova Uputa će Vam pomoći pri ispunjavanju Vašeg zahtjeva Sudu. Molimo da ju pažljivo pročitate prije nego što počnete ispunjavati formular i da se na nju vraćate kasnije, kod svake točke posebno.
Ispunjeni obrazac će biti Vaš zahtjev Sudu na temelju članka 34. Konvencije. Sud će Vaš slučaj ispitati na temelju tog obrasca. Zbog toga je važno da ga ispunite u cijelosti i točno, čak i ako ćete ponoviti neke informacije koje ste Tajništvu već uputili u prethodnoj korespondenciji.
Kao što ćete vidjeti, obrazac se sastoji od osam dijelova. Morate sve ispuniti, kako bi Vaš zahtjev sadržavao sve informacije koje se zahtijevaju prema Poslovniku Suda. U daljnjem tekstu naći ćete uputu za svaku točku posebno. Na kraju te upute naći ćete također i tekst pravila 45. i 47. Poslovnika Suda.

UPUTA ZA ISPUNJAVANJE OBRASCA

I. STRANKE (1-13)
Pravilo 47, stavak 1. a), b) i c)
Ako ima više podnositelja, potrebno je navesti sve zahtijevane podatke za svakoga posebno (ako je potrebno, na posebnom listu). Podnositelj može imenovati zastupnika. Takav zastupnik mora biti odvjetnik ovlašten za obavljanje odvjetničke prakse na području bilo koje od ugovornih stranaka s mjestom stalnog boravka u jednoj od njih, ili pak druga osoba odobrena od Suda. Kada podnositelj ima zastupnika, potrebno je u tom dijelu obrasca navesti relevantne podatke. U tom će slučaju Tajništvo Suda kontaktirati samo zastupnika.
II. OPIS ČINJENICA (14)
Pravilo 47, stavak 1. d)
Kratko i jasno opišite činjenice na koje se žalite. Pokušajte opisati događaje kronološkim redom. Navedite točne datume. Ako se Vaš zahtjev odnosi na više različitih žalbi (na primjer na različite sudske postupke), navedite podatke za svaku posebno.
III. IZJAVA O NAVODNOJ POVREDI ODREDABA KONVENCIJE I RELEVANTNIM ARGUMENTIMA (15)
Pravilo 47, stavak 1. e)
U tom dijelu obrasca morate iznijeti .to je moguće preciznije na .to se .alite prema Konvenciji. Navedite na koju odredbu Konvencije se pozivate i objasnite za.to smatrate da činjenice koje ste izlo.ili u dijelu II. Ovog obrasca čine povredu tih odredaba.

Vidjeti će te da neki od članaka Konvencije dopuštaju, pod određenim uvjetima, ograničavanje prava koja se jamče. (vidi, na primjer, alineje a) - f) stavka 1. članka 5. i stavak 2. članaka 8 - 11). U slučaju da se pozivate na takav članak pokušajte objasniti zbog čega smatrate ta ograničenja neopravdanim.

IV. IZJAVA U VEZI S ODREDBAMA ČLANKA 35, STAVKA 1. KONVENCIJE (16-18)

Pravilo 47, stavak 2. a)

U ovom dijelu morate iznijeti podatke o pravnim sredstvima koja ste iscrpili pred domaćim organima. Morate ispuniti sve tri točke tog dijela i iznijeti istu informaciju odvojeno za svaku pojedinačnu žalbu. U točki 18. morate navesti postoji li još bilo kakva mogućnost žalbe ili pravnog sredstva kojeg još niste iskoristili. Ako takvo sredstvo postoji, morate ga navesti (na primjer ime suda ili organa nadležnog za žalbu) i objasnite zbog čega ga niste iskoristili.

V. IZJAVA O PREDMETU ZAHTJEVA (19)

Pravilo 47, stavak 1. g), Ovdje morate ukratko objasniti što želite postići zahtjevom Sudu.

VI. IZJAVA O DRUGIM MEĐUNARODNIM POSTUPCIMA (20)

Pravilo 47, stavak 2. b)

Navedite jeste li žalbe koje su predmet Vašeg zahtjeva već podnijeli u nekim drugim postucima međunarodne istrage ili rješavanja. Ako jeste, trebate dati sve podatke, uključujući naziv organa kojemu ste podnijeli Vaše žalbe, datume i podatke o svim postupcima koji su uslijedili i o svim donesenim odlukama. Trebate, također, dostaviti kopije relevantnih odluka i drugih dokumenata.

VII. POPIS DOKUMENATA (21)

Pravilo 44, stavak 1. f) **(SAMO KOPIJE)**

Ne zaboravite priložiti Vašem zahtjevu i navesti u popisu sve presude i odluke koje navodite u djelu IV. i VI, kao i sve druge dokumente koje želite da Sud uzme u obzir kao dokazni materijal (zapisnike, izjave svjedoka itd.). Uključite sve dokumente u kojima se navode razlozi sudske ili druge odluke, kao i samu odluku. Šaljite samo dokumente koji su relevantni, tj. u svezi s Vašom žalbom koju ste proslijedili Sudu.

VIII. IZJAVA I POTPIS (23-24)

Pravilo 45, stavak 3.

Ako zahtjev potpiše zastupnik podnositelja, potrebno je priložiti punomoć potpisanu od podnositelja i od zastupnika podnositelja (ako ista nije bila priložena ranije).

Pravila 45. i 47. Poslovnika Suda

Pravilo 45.

(Potpisi)

1. Svi zahtjevi na temelju članaka 33. ili 34. Konvencije moraju se podnijeti u pisanom obliku s potpisom podnositelja ili njegova zastupnika.

2. Ako zahtjev podnosi nevladina organizacija ili grupa pojedinaca, mora ju potpisati osoba ovlaštena za zastupanje takve organizacije ili grupe. Vijeće ili Odbor će odlučiti jesu li osobe koje su potpisale zahtjev, ovlaštene za to ili nisu.

3. Ako podnositelj ima zastupnika u skladu s Pravilom 36, ovaj mora priložiti punomoć ili pisano

ovlaštenje.

Pravilo 47.

(Sadržaj pojedinačnog zahtjeva)

1. Svaki zahtjev prema članku 34. Konvencije mora se podnijeti na obrascu kojeg šalje Tajništvo, osim ako Predsjednik Odjela o kojem je riječ ne odluči drukčije. Potrebno je navesti:

a) ime, datum rođenja, državljanstvo, spol, zanimanje i adresu podnositelja;

b) ime, zanimanje i adresu zastupnika, ako takav postoji;

c) ime visoke ugovorne stranke protiv koje se podnosi zahtjev;

d) kratak opis činjenica i argumenata;

e) kratku izjavu o navodnim povredama odredaba Konvencije i relevantne argumente;

f) kratku izjavu o tome jesu li ispunjeni svi uvjeti glede dopuštenosti (iscrpljenje svih domaćih pravnih sredstava i pravilo o 6 mjeseci) u skladu s odredbama članka 35, stavka 1. Konvencije;

g) predmet zahtjeva;

i u privitku poslati:

h) kopije svih relevantnih dokumenata, posebno odluka, sudskih ili drugih, koje se odnose na predmet tužbe.

2. Podnositelj mora nadalje:

a) pribaviti podatke te dokumente i odluke koji se navode u točki 1. h), kako bi bilo razvidno da su ispunjeni uvjeti dopuštenosti (iscrpljenje domaćih pravnih sredstava i pravilo o 6 mjeseci) prema članku 35, stavak 1. Konvencije i

b) navesti je li već podnio svoj zahtjev u bilo kojem drugom postupku međunarodne istrage ili rješavanja.

3. Podnositelji koji ne žele da se njihov identitet otkrije, moraju to navesti i poslati izjavu s obrazloženjem razloga za odstupanje od normalnog pravila o javnosti podataka i postupaka pred Sudom.

4. Ako uvjeti iz stavaka 1. i 2. nisu ispunjeni, može se dogoditi da Sud neće razmatrati zahtjev.

5. Datumom podnošenja zahtjeva smatrat će se datum prvog pisma u kojemu je podnositelj ukratko izložio predmet tužbe. Sud može, međutim, iz opravdanih razloga odlučiti da se kao datum podnošenja zahtjeva smatra neki drugi datum.

6. Podnositelj mora obavijestiti Sud o svim mogućim promjenama adrese i svim okolnostima koje su od relevantnog značenja za zahtjev.

UPUTA ZA PODNOŠENJE ZAHTJEVA
EUROPSKOM SUDU ZA LJUDSKA PRAVA

I. KOJE ZAHTJEVE SUD MOŽE RAZMATRATI?

1. Europski sud za ljudska prava međunarodna je institucija koja može, **pod određenim uvjetima**, razmatrati zahtjeve osoba koje se žale da su prekršena njihova prava po Europskoj konvenciji o ljudskim pravima. Spomenuta Konvencija je međunarodni ugovor kojim su se brojne europske države obavezale osigurati **određena temeljna ljudska prava**. Zajamčena prava navedena su u samoj Konvenciji, te u Prvom, Četvrtom, Šestom i Sedmom protokolu koje su prihvatile samo neke države.
U prilogu ćete naći spomenute dokumente, koje trebate pažljivo pročitati.

2. Ukoliko smatrate da ste osobno i izravno bili žrtva povrede jednog ili više temeljnih prava od strane jedne od država, imate pravo podnijeti zahtjev Sudu.

3. Sud može razmatrati samo zahtjeve koji se odnose na povredu jednog ili više **prava navedenih u Konvenciji i Protokolima**. Europski sud nije prizivni sud u odnosu na domaće sudove, te ne može poništiti ili izmijeniti njihove odluke. Sud, nadalje, ne može izravno intervenirati u Vaše ime kod organa u vezi kojih se žalite.

4. Sud može razmatrati samo zahtjeve protiv država koje su ratificirale Konvenciju ili Protokol o kojem je riječ, te koji se tiču **događaja koji su se dogodili nakon određenog datuma**. Taj datum varira ovisno o državi protiv koje se podnosi zahtjev, te ovisno o tome da li se zahtjev odnosi na pravo navedeno u samoj Konvenciji ili u jednom od Protokola.

5. Sudu se možete žaliti isključivo u vezi **predmeta koji su u nadležnosti javnih organa vlasti** (zakonodavstva, uprave, suda, itd.) jedne od tih država. **Sud ne može razmatrati zahtjeve protiv pojedinaca ili privatnih organizacija.**

6. U skladu s uvjetima navedenim u članku 35. stavku 1. Konvencije, Sud može razmatrati zahtjev tek **nakon što su iscrpljeni svi domaći pravni lijekovi** i unutar razdoblja od **šest mjeseci od dana donošenja konačne odluke**. Sud neće moći razmatrati nijedan zahtjev koji ne zadovoljava navedene uvjete dopuštenosti.

7. Stoga je neophodno da, prije no što se obratite Sudu, iscrpite **sve pravne lijekove** u državi protiv koje se želite žaliti, a koji su relevantni za Vaš predmet. Ukoliko to ne učinite, morat ćete dokazati da bi takva sredstva bila nedjelotvorna. U skladu s tim, prvo se morate obratiti domaćim sudovima, uključujući i žalbu najvišem sudu koji ima nadležnost u tom predmetu, u kojoj trebate iznijeti, barem u osnovi, iste pritužbe koje kasnije želite iznijeti u svom zahtjevu Sudu.

8. Kada se koristite odgovarajućim pravnim lijekovima, trebate **poštovati sva pravila postupka**, uključujući vremenske rokove. Ukoliko je, primjerice, Vaša žalba bila odbijena jer ste je podnijeli prekasno, ili ste je podnijeli pogrešnom sudu, ili pak niste poštovali odgovarajući postupak, Sud neće biti u mogućnosti razmatrati Vaš zahtjev.

9. Međutim, ukoliko se žalite na sudsku odluku kao što je presuda ili kazna, nije potrebno uložiti

zahtjev za ponavljanje postupka nakon što ste prošli redovite žalbene sudske postupke. Također ne morate iskoristiti pravne lijekove koji nemaju utjecaja na ishod predmeta, ili tražiti oprost ili pomilovanje. Peticije (upućene parlamentu, predsjedniku države ili vladi, ministru ili ombudsmanu) se ne smatraju djelotvornim pravnim lijekovima koje biste trebali iskoristiti.

10. Nakon što je donesena odluka najvišeg nadležnog domaćeg suda ili organa, morate podnijeti zahtjev Sudu u roku od **šest mjeseci**. Razdoblje od šest mjeseci računa se od datuma kada je konačna odluka u redovitom sudskom postupku dostavljena Vama ili Vašem odvjetniku, a ne od datuma eventualnog kasnijeg odbijanja zahtjeva za ponavljanjem postupka ili molbe za oprost ili pomilovanje, ili bilo kojeg drugog zahtjeva nekom od organa koji nema utjecaja na ishod spora.

11. Razdoblje od šest mjeseci prekida se u trenutku kada Sud primi bilo Vaš **prvi dopis** u kojem je jasno iznesen, makar samo u osnovnim crtama, predmet zahtjeva koji želite podnijeti, bilo ispunjeni obrazac zahtjeva. Ukoliko svojim dopisom samo zatražite informacije od Suda, time se ne prekida rok od šest mjeseci koji je potrebno poštovati.

II. KAKO PODNIJETI ZAHTJEV SUDU?

12. **Službeni jezici** Suda su engleski i francuski, no, ukoliko Vam je to jednostavnije, možete se obratiti tajništvu na jednom od službenih jezika država koje su ratificirale Konvenciju.

13. Zahtjev Sudu se ne može podnijeti telefonom ili elektronskom poštom, osim ako je takav zahtjev **potvrđen putem regularne pošte**. Posve je nepotrebno da osobno dođete u Strasbourg kako biste usmeno iznijeli svoj zahtjev.

14. Sve dopise koji se odnose na Vaš zahtjev trebate poslati na sljedeću **adresu**:

The Registrar
European Court of Human Rights
Council of Europe
F.67075 STRASBOURG CEDEX.

15. Po primitku Vašeg prvog dopisa ili ispunjenog obrasca zahtjeva, tajništvo Suda će Vamo dgovoriti, te Vas izvijestiti da **je na Vaše ime otvoren spis (čiji broj morate navesti u svim svojim sljedećim dopisima)**. Nadalje, tajništvo može zatražiti da dostavite dodatne podatke, dokumente ili pojedinosti vezane uz Vašu žalbu. Međutim, tajništvo Vam ne može pružiti podatke o zakonima i drugim propisima te pravu države protiv koje se žalite, niti Vam može davati pravne savjete koji bi se ticali Vašeg zahtjeva te tumačenja domaćeg prava.

16. U Vašem je interesu da **bez nepotrebnog odlaganja** odgovarate na dopise tajništva. Ukoliko odgovorite sa zakašnjenjem ili propustite odgovoriti na dopis koji Vam je uputilo tajništvo, Sud može zaključiti da ne želite ustrajati u svom zahtjevu. Stoga će, ukoliko u roku od godine dana ne vratite ispunjeni obrazac zahtjeva ili ne odgovorite pravovremeno na bilo koji dopis koji Vam tajništvo uputi, Vaš spis biti uništen.

17. Ako smatrate da se Vaša žalba odnosi na jedno od prava zajamčenih Konvencijom ili njenim Protokolima te da su zadovoljeni navedeni uvjeti, **trebate pažljivo i čitko ispuniti obrazac zahtjeva**

te ga vratiti tajništvu u roku od šest tjedana.

18. U skladu s uvjetima pravila 47. poslovnika Suda, **u svom zahtjevu nužno trebate**:

(a) **ukratko iznijeti činjenice** na koje se želite žaliti te izložiti prirodu Vaše žalbe;

(b) naznačiti **prava zajamčena Konvencijom** za koja smatrate da su u Vašem slučaju bila povrijeđena;

(c) navesti **pravne lijekove koje ste iskoristili**;

(d) navesti sve **službene odluke** vezane uz Vaš predmet, pri čemu trebate navesti datum svake odluke, naziv suda ili organa koji je odluku donio, te ukratko iznijeti sadržaj same odluke. Svom dopisu trebate priložiti kopije svih odluka. (Dokumenti Vam neće biti vraćeni, stoga je u Vašem interesu da nam **šaljete samo kopije, a ne originale**).

19. U skladu s pravilom 45. poslovnika Suda, obrazac zahtjeva morate **potpisati** Vi kao podnositelj zahtjeva, ili Vaš zastupnik.

20. Ukoliko ne želite da Vaš identitet bude dostupan javnosti, morate to zatražiti te iznijeti razloge za takvo odstupanje od pravila o dostupnosti podataka u postupku javnosti. Sud može odobriti **anonimnost** u iznimnim i opravdanim slučajevima.

21. Ako želite podnijeti zahtjev Sudu posredstvom **odvjetnika ili drugog zastupnika**, morate uz zahtjev dostaviti **punomoć kojom njega ili nju ovlašćujete da Vas predstavlja** u postupku pred Sudom. Zastupnik pravne osobe (tvrtke, udruženja, i sl.) ili grupe pojedinaca mora dostaviti dokaz da je ovlašten zastupati tu pravnu osobu ili grupu pojedinaca. Da biste podnijeli zahtjev Sudu, Vaš zastupnik (ukoliko ga imate) ne mora biti odvjetnik. Međutim, u kasnijem tijeku postupka zastupnik podnositelja zahtjeva mora, osim u iznimnim slučajevima, biti odvjetnik ovlašten za obavljanje odvjetničke prakse u jednoj od država potpisnica Konvencije. Odvjetnik mora barem pasivno znati jedan od službenih jezika Suda (engleski ili francusi).

22. Sud ne jamči **pravnu pomoć** u početnoj fazi, prije odluke o komunikaciji zahtjeva. U kasnijoj fazi postupka nakon što Sud odluči komunicirati zahtjev vladi države protiv koje se žalite te od nje zatražiti pismena očitovanja možete imati pravo na besplatnu pravnu pomoć ukoliko nemate dovoljno sredstava za plaćanje troškova odvjetnika, te ukoliko Sud smatra da je dodjela takve pomoći neophodna za ispravno vođenje postupka.

23. Vaš predmet će biti razmatran **besplatno**, te će Vas tajništvo obavještavati o tijeku Vašeg postupka. Kako se postupak u početku odvija pismeno, nema svrhe da osobno dolazite u sjedište Suda, osim ukoliko Vas Sud pozove na raspravu.

Pregled postupka pred Europskim sudom za ljudska prava u Strasbourgu

priredio Marko Ivkošić

Postupovna pravila suda (RULES OF COURT) su na snazi od 1. studenog 1998.
ww.echr.coe.int

A) Preduvjeti za postupak:

a) Članstvo države u Vijeću Europe
b) Ratifikacija Europske konvencije za zaštitu ljudskih prava i temeljnih sloboda
c) Prihvat jurisdikcije Europskog suda za ljudska prava u Strasbourgu

1. Službeni jezici suda su engleski i francuski - Rules of Court (čl. 76.) - (Sud može dopustiti svjedocima da govore jezikom zemlje iz koje dolaze samo ako imaju prevoditelja)
2. Zahtjev mora biti u pismenom obliku
3. Zastupanje: - nije obvezno do odluke suda o dopustivosti žalbe
   - obvezno u daljnjem postupku nakon odluke suda o dopustivosti žalbe
4. Materijalna osnova žalbe može se zasnivati na:
   tvrdnji o neposrednoj (izravnoj) povredi i kršenju prava zajamčenih konvencijom
   tvrdnji o posrednoj povredi ili kršenju prava zajamčenih konvencijom

(Žalbu mogu podnijeti pojedinci, skupine građana, nevladine organizacije, ali to ne mogu učiniti tijela državne vlasti tj. subjekti javnog prava)

5. Kršenje prava zajamčenog konvencijom mora biti od strane državne vlasti
6. Iscrpljen redovni pravni put tako da su iskorišteni pravni lijekovi koje predviđa nacionalna jurisdikcija, ali tu postoje izuzetci koje se u praksi suda naročito odnose na razuman rok za zastitu povrijeđenih prava (čl. 6. Europske konvencije) kao npr. slučajevi :
Rajak v. Croatia no.49706/99, ECHR 2001-VI;
Styranski v. Poland no.28616/95, ECHR 1998-VII
7. Vremenski rok za podnosenje žalbe ograničen je na šest mjeseci od učinjene povrede ili kršenja prava od strane države

B) Osnovna načela postupka

1. Načelo kontradiktornosti
2. Načelo javnosti (Za razliku od pojedinih nacionalnih prava vrlo široka interpretacija ovog načela vidljiva je i po dostupnosti svih odluka sa individualnim imenima stranaka na Internetu)
3. Načelo pravičnog suđenja
4. Načelo saslušanja stranaka- Rules of Court (63)

5. Načelo pokušaja nagodbe posredstvom Kancelara - Rules of Court (62)
6. Dokazni postupak
7. Presuda - Rules of Court (74)
8. Izvršenje presude ("Konačna odluka se dostavlja Vijeću ministara koji nadziru njeno izvršenje"(čl. 46 Europske konvencije), ali nema izrazitih pravnih sankcija protiv država koje ne izvršavaju odluke suda, ali u praksi je efikasan politički pritisak)

PROCEDURE AND JUDGMENT IN RAJAK V.CROATIA CASE

Petar Pejković

The European Court of Human Rights (fourth section),sitting as a Chamber composed of seven judges and Section Registrar, having deliberated in private on 12 October 2000 and on 7 June 2001, delivered the judgment which was adopted on the last-mentioned date. On the first mentioned date the Chamber declared application partly admissible.

PROCEDURE

The case was lodged to the court by the application (no.49 706/99) according to the Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms by a Croatian national, Mr Rajko Rajak, on 23 February 1999. Mr Rajak alleged that, contrary to the Article 6 § 1of the Convention, civil proceedings instituted by him had not been heard within a reasonable time.That chamber that would consider the case was instituted accordingly to the Rule 26 § 1 of the Rules of Court. The Chamber decided after consulting the parties that no hearing on the merits was required (Rule 59 § 2 in fine).

THE FACTS

On 18 June 1975 the applicant filed a civil action with the Rijeka District Court against "Brodograđevna industrija 3.May" claiming payment for technical improvements and rationalisation of the working process. The case went through the different instances of different courts of ex-Yugoslav federal republic Croatia and of the Republic Croatia. In fact, on 29 May 2000 the case was still pending before Croatian court of the first instance (Rijeka Municipal Court).

THE LAW

1. THE GOVERMENT`S PRELIMINARY OBJECTION

The goverment`s preliminary objection emphesizes that the applicant has failed to exhaust domestic remedies as he has not made an application to the Section 59 § 4 of the Constitiutional Court Act. Government claims that such application is an effective remedy and has power to reduce the length of the proceedings. Applicant`s view is quite different.

Accordingly to the particular circumstances of the present case, a request under Section 59 § 4 cannot be considered as an effective remedy.The Government`s preliminary objection therefore must be dissmissed.

2. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

The applicant complains that the proceedings concerning his request have not been concluded within

reasonable time as required byArticle 6 § 1 of the Convention. It reads as follows; In the determination of his civil rights and obligations everyone is entitled to a hearing within a reasonable time by (a) tribunal.

PERIOD TO BE TAKEN INTO ACCOUNT
State of the case on 5.November 1997 must be taken into consideration (Styranovski v. Poland no.28616/95 ECHR 1998-VII).
However the period which falls under the Court`s jurisdiction begun on 5 November 1997, when the Convention entered into force in respect of Croatia.

Applicable criteria; circumstances of the case, Court`s case law, complexity of the case, the conduct of the applicant and relevant authorities, and the importance what is at stake for applicant in the obligation.

3. THE COURT`S ASSESSMENT
The Court find out that there has been a violation of Article 41 of the Convention
The case was not exceptionaly complex. The applicants conduct of the case did not cause the lenghth of the proceedings. The hearings were held rarely, with delays for which there is no justification. The Court is not persuaded by the government explanation for delays. Contracting States have to organize their legal systems in such a way that everyone may obtain the final decision on disputes relating to civil rights and obligations within a reasonable time.
The lenghth of the proceedings, which are still pending, failed to satisfy reasonable time requirement.

APPLICATION OF ARTICLE 41 OF THE CONVENTION
Article 41 provides; "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

DAMAGE
The Court notes that the applicant`s claim for pecuniary damage is primarily based on lost business opportunities. It cannot inquire into what the outcome would have been if the applicant had obtained a final decision on his action within a reasonable time. The Court accordingly dismisses the claim.
The Court acceptes that the applicant suffered damage of non-pecuniary nature as a result of the lenghth of the civil proceedings instituted by him. The Court awards to the applicant 30 000 Croatian Kunas(HRK).

COSTS AND EXPENCES
The Court observes that there is no element in the file suggesting that the applicant has incurred,

before the domestic courts, any extra costs and expenses because of the length of the proceedings. The Court awards to the applicant HRK 5 800.

DEFAULT INTEREST

At the date of adoption of present judgment the staitutory rate of interest applicable in Croatia is 18% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Dismisses the Government's preliminary objection;
2. Holds that there has been a violation of Article 6 § 1 of the Convention;
3. Holds

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 §2 of the Convention the following amounts:

(i) in respect of costs and expensen, 5,800 (five thousand eight hundred) Croatian Kunas;

(ii) in respect of costs and expenses, 5,800 (five thousand eight hundered) Croatian Kunas;

(b) that simple interest at an annual rate of 18% shall be payable from the expiry of the above mentioned three months until settlement;

4. Dismisses the remainder of the applicant's claims for just satisfaction and costs and expenses.

Done in English, and notified in writing on 28 June 2001, persuant to Rule 77§§ 2 and 3 of the Rules of Court.

COUNCIL OF EUROPE

EUROPEAN COURT OF HUMAN RIGHTS

FIRST SECTION

CASE OF KUTIĆ V. CROATIA

(Applications no. 48778/99)

JUDGEMENT

STRASBOURG

March 2002.g.

This judgement will become final in the circumstances set out in Article 44 paragraph 2 of the Convention. It may be subject to editional revision.

IN THE CASE OF KUTIĆ V. CROATIA

The European Court of Human Rights (First Section), sitting as a chamber camposed of Mr. C.L. Rozihis, President,

Mr. G. Bonello,

Mr. P. Lorenzen,

Mrs N. Vajić,

Mrs S. Botoncharova

Mr. V. Zagrebelsky

Mrs E. Steiner, judges

and Mr. E. Fribergh Section Registar

Having deliberated in private on 4 October 2001 and on 21 February 2002. delivers the following judgement, which was adopted on the last mentioned date.

PROCEDURE

1. The case originated in an applocation (no. 48778/99) against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human rights and Fundamental Freedoms, by two Croatian nationalist, Mr Voijn and Ms Ana Kutić (the applicants), on February 1999.

2. The applicants who had been granted legal aid were represented by Mr Anto Nobilo. The Croatian Government were represented by their agent Ms Lidija Lukina-Karajković.

3. The applicants alleged that they had no access to a court in so far as they were prevented from having their civil claim for damages decided due to the enactment in 1996., of legislation which orokred that all proceedings concerning claim for damages resulting from terrorist acts were to be

stayed. They also complain that the proceedings have exceeded the " reasonable time" requirement.

4. The application was allocated to the Fourth Section of the Court.

5. By a decision of 4 October 2001, The Court declared application admissibile.

6. The applicant and and the Government each filed observations on the merits. The parties replied in writing to each other's observations.

THE FACTS

1. The circumstances of the case

A) Proceedings instituted on 29 November 1994.

- On 26 December 1991 the applicants house in Martinec village was destroyed following an explosion.
- On 29 November 1994 the applicants lodged an action for damages against the Republic of Croatia with the Zagreb Municipal Court. A hearing was held on 2 May 1995.
- On January 1996 the Croatian Parliament introduced an amandment to the Civil Obligations Act which provided zhat all proceeding actions for damages resulting from terrorist acts were to be stoyed pending the enactment of new legislation on the subject and that before enactment of such new legislation damages for terrorist acts could not be sought. So far the Croatian authorites have not enocted any new legislation regulating the matter.

B) On 13 November 1994 the applicants garage and the adjacent storage room and a meat-curing shed in Bjelovar were destroyed, also as a result of an explosion.

- On 14 December 1994 the applicants lodged an action for damages against the Republic of Croation with the Zagreb Municipal Court.

THE LAW

1. ALLEGED VIOLATION OF ARTICLE 6 paragraph 1 OF THE CONVENTION, which provides as follows:

"In the determination of his civil rights and obligations..., everyone is entitled to fair...hearing a reasonable time by ... tribunal ...

ACCESS TO A COURT

- The Government contended that the applicants did have access to a court and that they had avoiled themselves of it when they had lodged two civil actions for damages with the Zagreb Municipal Court. It is true that the proceedings were stayed following the enactment of new legislation, but this situation was only temporary and the proceeding would be resumed after the enactment of new law governing responsibily for damage resulting from terrorist acts.

- Their rights of access to a court was seriously impaired since there had been no new legislation

governing responsibility for damage caused by terrorist acts for over six years. The court considers that this right of access to a court does not only include the right to institute proceedings, but also the right to obtain a "determination" of the dispute by a court.

- The Court reiterates that in case of the Immobiliare Saffi it found a violation of the applicant company's right of access to a court, under Article 6 paragraph 1 of the Convention.
- In the present case the Court notes that the proceedings were stayed not at the stage of the execution of a final judgement, but earlier, even befor the first instance court had apapted any judgement concerning the applicants' civil claim for damages. In the present case the proceedings have so for been stayed for over 6 years, more than four if which have been after the Convention entered into force in respect of Croatia.
- The Court finds, therefore, that the Long period for which the applicants have been prevented from having their civil claims determined by domestic

Court as a consequence of a legislative measure constitutes a violation of Article 6 paragraph 1 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

If the Court finds that there has been a violation of the Convention or the Protocols, and if the internal law of the High Controcting Party concerned allows only partiol reparation to be made, the Couet Shall, if necessary, afford just satisfaction to the injured party.

FOR THESE REASONS; THE COURT UNANIMOUSLY

1. Holds that there has been a violation of Article 6 paragraph1 of the Convention in respect of the applicants right of access to a court.
2. Holds that no separate issue arises under Article 6 paragraph 1 of the Convention in respects of the length of the proceedings.
3. Holds a) that the respodent State is to pay the applicants jointly, within three month from the date on the which judgement becomes final according to the Article 44 paragraph 2 of the Convention, EUR 10,000 in respect of non - pecuniary damage to be converted into the national currency of the respondent State.
4. Dismisses the remainder of the applicants' claim for just satisfaction.

Erih Fribergh — Christas Rozahis

Registrar — President

Priredila: *Marina Gruberac*

Pravni fakultet Split

CASE OF MIKULIĆ v. CROATIA
(Application no. 53176/99)

I.THE FACTS

THE CIRCUMSTANCES OF THE CASE

The applicant, Ms Montana Lorena Mikulić, is a child born out of wedlock on 25 November 1996. On 30 January 1997 the applicant and her mother filed a civil suit against H.P. before the Municipal Court (Općinski sud u Zagrebu) in order to establish paternity.

At the hearing on 17 June 1997 the Municipal Court pronounced judgment by default against defendant. The adoption of such a judgment is expressly prohibited by the Marriage and Family Act (Zakon o braku i porodičnim odnosima-1977, 1980, 1982, 1984, 1987, 1989, 1990, 1992 and 1999) in civil-status matters. On 1 July 1997 the defendant appealed against that judgment.

At the hearing on 6 October 1997 the Zagreb Municipal Court annulled its own judgment.

Meanwhile, H.P. filed a motion accusing the presiding judge of bias, which was allowed on 27 January 1998 by the President of the Zagreb Municipal Court. Consequently, on 23 February 1998 the case was transferred to another judge.

The first-instance court has scheduled 15 hearings, six of which have been adjourned on account of the defendant's absence. It has scheduled six appointments for DNA tests and the defendant has not attended any of those appointments.

On 3 October 2000 the applicant's counsel received the Municipal Court's judgment of 12 July 2000 establishing the defendant's paternity and granting the applicant maintenance. It found that the fact that the defendant had been avoiding DNA tests supported the applicant's claim. On 27 November H.P. appealed against the judgment.

On 3 April 2001 the Zagreb County Court (Županijski sud u Zagrebu) quashed the first-instance judgment and remitted the case for retrial. On 15 May and 13 July 2001 the applicant requested the President of the Supreme Court to speed up the proceedings.

On 19 November 2001 the court of first-instance concluded the trial and gave judgment establishing the defendant's paternity and granting the applicant maintenance.

On 7 December 2001 the applicant filed on appeal against the first-instance judgment, objecting to the amount of maintenance to be paid to her by H.P. H.P. also appealed against the judgment.

II. THE LAW

A. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

The applicant alleged that the proceedings to establish H.P.'s paternity had not been concluded within a reasonable time as required by Article 6 § 1 of the Convention.

The Government submitted that special urgency was required in family proceedings contended that in the present case the court had assessed the facts on the basis of the evidence produced by the parties.

As to the conduct of the courts, the Government submitted that the court had been prevented from proceeding speedily with the case as a result of the behaviour of the defendant, who had repeatedly ignored appointments for DNA tests and failed to attend court hearings.

The Court observed that the proceeding commenced on 30 January 1997, when the applicant lodged a civil action to have H.P.'s paternity established by the Zagreb Municipal Court. However, the period, which falls within the Court's, jurisdiction did not begin on that date, but on 6 November 1997, after the Convention entered into force in respect of Croatia.

The Court reiterated that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and having regard to the criteria laid down in the Court's Case law, in particular the complexity of the case, the conduct of the applicant and of the relevant authorities, and the importance of what is at stake for the applicant in the litigation.

The proceedings have altogether been pending before the first-instance court for about four years and before the appellate court for about four months.

The Court reiterated that it is for Contracting States to organise their legal systems in such a way that their courts can guarantee the right to everyone to obtain a final decision on disputes relating to civil rights and obligations within a reasonable time.

B. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

The applicant complained that her right to respect for her private and family life had been violated because the domestic courts had been inefficient in deciding her paternity claim and had therefore left her uncertain as to her personal identity. She relied on Article 8 of the Convention that provides also that there shall be no interference by a public authority with exercise of this right, but with some exceptions.

The Government maintained that the length of the paternity proceedings did not fall within the scope of Article 8 of the Convention. They argued that in the present case H.P. had not expressed a willingness to establish any kind of family relationship with the applicant.

The Court has held that respect for private life requires that everyone should be able to establish details of their identity as individual human beings. Consequently, there is a direct link between the establishment of paternity and the applicant's private life.

The applicant complained in substance not of action but of a lack of action by the State.

The Court noted in this connection that no measures exist under domestic law to compel H.P. to comply with the first-instance court's order that DNA tests be carried out. Nor is there any direct provision governing the consequences of such non-compliance.

The Croatian authorities have therefore failed to secure to the applicant the respect for her private life to which she is entitled under the Convention.

There has, consequently, been a violation of Article 8 of the Convention.

C. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

The applicant also submitted that she had no effective remedy whereby she could raise the issue of the excessive length of the proceedings in her case. Furthermore, the domestic legal system did not provide for any measure that would oblige defendants' paternity disputes to comply with a court's order for DNA tests that amounted to a violation of Article 13 of the Convention.

The Government invited the Court to find this part of the application manifestly ill founded. They contended that the applicant had the possibility of lodging an application under section 59 of the Constitutional Court Act.

The Court found that in the present case there has been a violation of Article 13 of the Convention in so far as the applicant has no domestic remedy whereby she may enforce her right to a "hearing within a reasonable time" as guaranteed by Article 6 § 1 of the Convention.

FOR THESE REASONS THE COURT, SITTING AS A CHAMBER COMPOSED OF:

Mr C. L. Rozakis, *President,*

Mrs F. Tulkens,

Mr P. Lorenzen,

Mrs N. Vajić,

Mr E. Levits,

Mr A. Kovler,

Mr V. Zagrebelsky, *judges,*

and Mr E. Fribergh, *Section Registrar*,

AND HAVING DELIBERATED IN PRIVATE ON 17 JANUARY 2002, UNANIMOUSLY

I. held that there has been a violation of Article 6 § 1 of the Convention;

II. held that there has been a violation of Article 8 of the Convention;

III. held that there has been a violation of Article 13 of the Convention in respect of the complaint under Article 6 § 1 of the Convention;

IV. held it is not necessary to examine the complaint under Article 13 of the Convention in relation to Article 8 of the Convention;

V. held

♦ that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 7,000 (seven thousand euros) in respect of non-pecuniary damage;

♦ that simple interest at an annual rate of 18% shall be payable from the expiry of the above-mentioned three months until settlement;

VI. dismissed the remainder of the applicant's claim for just satisfaction.

Priredila: *Dubravka Kežić*

SLIVENKO I DRUGI PROTIV LETONIJE, 14. STUDENI 2001.

Jedan dan na europskom sudu za ljudska prava u Strasbourgu

Axel Bormann i Stefan Hanisch, Berlin

S njemačkog preveo i sažeo izvorni članak: *Josip Škarpa*

1. Uvod

Izvorni Europski sud za ljudska prava je osnovan 1959. godine u Strasbourgu kako bi se bavio pritužbama zbog povrede odredbi *Konvencije za zaštitu ljudskih prava i temeljnih sloboda* od 4. studenoga 1950. (Europska konvencija o ljudskim pravima, EMRK – njemačka kratica). Koncem 1998. godine izvorni dvostruki sustav, koji se sastojao od nekadašnje Komisije za ljudska prava i izvornog, tada još uvijek privremenog suda, zamijenjen je konceptom trajnog suda. Cilj ove reforme, o kojoj su na sastanku održanom 9. listopada 1993. u Beču odlučili šefovi država i vlada zemalja zastupljenih u Vijeću Europe, bio je poboljšati učinkovitost zaštitnih mehanizama i skratiti trajanje postupka. Revizija postupovnih pravila je postala nužna radi rastućeg broja tužbi, njihove sve veće složenosti, proširenja članstva Vijeća Europe kao i zbog sve dužeg trajanja postupaka.

Stupanjem na snagu 11. *Dodatnog protokola Europske konvencije o ljudskim pravima* započeo je *1. studenoga 1998.* s radom novi Europski sud za ljudska prava. Sud čini određeni broj sudaca, koji je jednak broju država članica Vijeća Europe, koje su prihvatile nadležnost suda. Broj sudaca istog državljanstva nije ograničen, tako da slučajno jedan talijanski sudac radi za San Marino i jedan švicarski za Lihtenštajn. Suce bira parlamentarna skupština za razdoblje od šest godina, pri čemu je vrijeme službe sudaca izabranih na prvim izborima završavalo nakon tri godine, tj. krajem 2001., kako bi se polovica sudaca birala iznova svake tri godine.

U posebnosti postupka spada i činjenica da se zbog prednosti koja je dana sporazumnom rješavanju sporova samo jedan manji dio tužbi završi sudskom odlukom. Godine 2000., 6769 tužbi je ili poništeno ili odbačeno kao nedopušteno, 1082 je pripušteno u daljnji postupak, ali su u samo 695 slučajeva izrečene presude.

Prihvat nadležnosti, a time i odluka ovoga suda ne proizlazi automatski iz članstva dotične države u Vijeću Europe. Za takvo što je potrebna i ratifikacija *11. dodatnog protokola Europske konvencije o ljudskim pravima*. Armenija i Azerbejdžan su dvije države koje su posljednje pristupile Vijeću Europe tako da još uvijek nisu ratificirale gore spomenuti protokol, te stoga dosad nisu prihvatile nadležnost suda, a i ne postavljaju suce.

Sud i s njim povezana mogućnost priziva na jednu međunarodnu neovisnu instancu, a pod pretpostavkom da su iscrpljene sve mogućnosti domaće pravne zaštite, ima posebno značenje za građane jugoistočno i istočno-europskih post-socijalističkih država, s obzirom na činjenicu da jamstvo odvijanja postupka u skladu s načelima pravne države nije posvuda ostvareno, te na činjenicu velikog broja slučajeva izvanjskih pritisaka na pravosuđe. U konačnici djelatnost suda za ljudska prava podupire ove zemlje na putu razvoja u demokratske pravne države. O tome svjedoči, s jedne strane

veliki broj tužbi iz ovih zemalja, a s druge strane također i mnogobrojnost tu objavljenih pravnih savjetnika, znanstvenih monografija, novinskih članaka i članaka u časopisima, a koji se tiču djelatnosti suda. Tako je npr. u Rusiji, koja je 28. veljače 1996. pristupila *Konvenciji o ljudskim pravima* i ratificirala je 5. svibnja 1998., saznanje o mogućnosti podnošenja tužbe sudu u Strasbourgu postalo sastavni dio javne svijesti. Prema riječima ruskog odvjetnika Aleksandra Asnisa, koji s partnerom Vitalijem Portnovom, pored obitelji Slivenko zastupa još dvije stranke iz Rusije u tužbama protiv Republike Letonije pred sudom za ljudska prava, ovaj pravni put je: „jedan adut kojeg treba odigrati u svakoj prilici i skoro nakon svake presude, koja ne zadovoljava jednu od stranaka u sporu i njihove odvjetnike". S druge je pak strane, znanje o postupku i drugim detaljima rada suda iznimno slabo razvijeno. Tako se od strane mnogih, a između ostalih i od odvjetnika, ne uočava da se u slučaju ovog suda ne radi o nekakvoj nad-revizionoj instanci, za koju bi nacionalno pravo predstavljalo mjerilo odlučivanja, već se radi o sudu koji utvrđuje konkretne povrede *Europske konvencije o ljudskim pravima*.

S druge strane, pristup post-socijalističkih država ovoj konvenciji i s tim pristupom povezan stalni porast broja članica od 23 države godine 1989. na sada već 43, suočava sud s potpuno novim činjeničnim i tehničkim problemima koje on valja svladati.

2. Činjenično stanje

Slučaj Slivenko se tiče tužbe protiv Republike Letonije prema čl. 34 Konvencije o ljudskim pravima, koju su sudu podnijeli Tatjana Slivenko, njezin suprug Nikolaj Slivenko i njihova kćerka Karina Slivenko.

Sva tri tužitelja su pripadnici ruskog naroda. Tatjana Slivenko je rođena u Estoniji 1959. godine, a odselila je u dobi od jednog mjeseca s roditeljima u Letoniju. Nikolai Slivenko, rođen 1952. i oficir je nekadašnje sovjetske armije, te je 1977. premješten u Letoniju gdje se 1980. oženio za svoju sadašnju suprugu. Njihova kćerka Karina Slivenko rođena je 1980. Obitelj je imala stalno prebivalište u Rigi, u Letoniji. Sada žive u Kursku, u Rusiji.

Nakon državne neovisnosti Letonije godine 1991. roditelji Tatjane Slivenko, ona sama i njezina kćerka upisani su u letonski registar stanovništva kao „nekadašnji građani SSSR-a". Dana 2. ožujka ili 5. lipnja 1994. (točan datum je predmet spora stranaka), Nikolai Slivenko, koji je u tome trenutku bio ruski državljanin, istupio je iz ruske armije i 7. listopada 1994. zatražio je dozvolu boravka u Letoniji. Letonske službe, nadležne za pitanja državljanstva i migracija uskratile su mu tu dozovolu uz uputu, da bi obitelji nekadašnjih oficira sovjetske armije i oni sami, a prema rusko-letonskom sporazumu o povlačenju ruskih trupa iz Letonije od 30. travnja 1994., trebale napustiti zemlju. Dana 29. studenog 1994. ta ista služba je iz letonskog registra stanovništva izbrisala Tatjanu i Karinu Slivenko.

Nikolaj Slivenko je protiv odluke o odbijanju zahtjeva za izdavanje dozvole boravka pokrenuo parnicu koju je izgubio na sudu druge instance. Protiv ove presude nije ulagao daljnje pravne lijekove.

Dana 20. kolovoza 1996. protiv tužiteljica je donesen nalog o izgonu. Dana 22. kolovoza 1996. uručen im je nalog o iseljenju, koji ipak nije izvršen.

Nikolaj Slivenko je 1996. godine otputovao u Rusiju, gdje je obitelji Ministarstvo obrane na raspolaganje stavilo dvosobni stan. Usprkos tome, obje žene su ostale u Letoniji. Tatjana Slivenko je u svoje ime i u ime svoje kćerke podigla tužbu protiv ovih mjera državnih službi. Nakon presuda prve i druge sudske instance, koje su udovoljavale zahtjevima, Vrhovni sud je ipak dana 7. siječnja 1998. godine tužbu vratio na ponovno odlučivanje prizivnom sudu, koji je dana 6. svibnja 1998. odlučio da obje žene kao dio obitelji Nikolaja Slivenka trebaju napustiti zemlju. Ova odluka je 29. srpnja 1998. potvrdio Vrhovni suda.

Na temelju sada već pravovaljanog naloga o izgonu od 20. kolovoza 1996., obje žene su za kraće vrijeme stavljene u pritvor za osobe koje čekaju na izgon. Policija je dana 16. ožujka 1999. pretražila stan roditelja Tatjane Slivenko. Istog je dana Karina Slivenko ponovno uhićena, te zadržana u pritovoru za osobe koje čekaju izgon.

Godine 1999. obje žene su obavještene da moraju odmah napustiti Letoniju. Potom su one dana 11. srpnja 1999. otputovale k Nikolaju Slivenku. Tada je je Karina Slivenko već dovršila srednjoškolsko obrazovanje u Letoniji.

Sve do 20. kolovoza 2001. Tatjani Slivenko i njezinoj kćerki na temelju naloga o izgonu bilo je uskraćeno pravo posjeta roditelja koji su ostali u Letoniji, a koji su bolesni i kojima je potrebna skrb. Od tada one mogu dobiti vizu za posjet, koja im omogućava boravak u trajanju od najduže 90 dana godišnje. Nikolaj Slivenko, koji je dobrovoljno napustio zemlju mogao je više puta posjetiti Letoniju u razdoblju od 1996. do 2001.

3. Sažetak zahtjeva tužitelja

A) Sadržaj tužbe koju je dana 28. siječnja 1999. obitelj Slivenko dostavila Europskom sudu za ljudska prava bio je (skraćena verzija):

1. Tužitelji navode, da je izgonom iz Letonije povrijeđeno njihovo pravo na poštivanje privatnog i obiteljskog života, a prema čl. 8 *Konvencije o ljudskim pravima*. Prema njihovu shvaćanju, korektno tumačeni letonsko-ruski sporazum o povlačenju trupa ne bi uopće zahtjevao njihov izgon. Ali ako bi se ipak došlo do suprotnog zaključka i tada bi čl. 8 *Konvencije* svakako imao prvenstvo u primjeni.

2. Tužitelji nadalje navode povredu zabrane diskriminacije iz čl. 14. *Konvencije*, budući da su iz Letonije protjerani kao članovi ruske etničke manjine i kao članovi obitelji nekadašnjeg pripadnika ruske vojske. Tužitelji tvrde da im je prvo otkazan, a onda i uskraćen status "nekadašnjih državljana SSSR-a" (zakon Republike Letonije o nekadašnjim građanima SSSSR-a), a koji bi status spriječio njihov izgon. Stoga smatraju da su bili podvrgnuti drugačijem postupku, negoli ostali ne-Letonci koji su stalno boravili u Letoniji.

3. Tužitelji navode, da je povrijeđeno njihovo pravo na zaštitu vlasništva iz čl. 1. *Prvog dodatnog protokola konvencije o ljudskim pravima*, budući da radi gubitka statusa prebivališta i izgona iz

Letonije izmajmljeni stan u Rigi nisu mogli privatizirati. Nadalje navode da su letonske vlasti, nakon preseljenja obitelji u Rusiju, sebi omogućile pristup stanu, pri čemu su ukradeni ili uništeni neki osobni predmeti koji su ostavljeni u stanu.

4. Osim toga tužitelji se pozivaju na povredu prava na pravično suđenje iz čl. 6. *Konvencije*, a s obzirom na tijek sudskog postupka u Letoniji u pogledu zakonitosti njihova boravka u Letoniji.

5. Tužitelji također tvrde da protivno čl. 13. *Konvencije* nisu imali pravo na učinkovitu pravnu zaštitu protiv odluke o protupravnosti njihova boravka u Letoniji i protiv ovlaštenja na izgon.

6. Tatjana i Karina Slivenko nadalje navode, da okolnosti njihova uhićenja dana 29. listopada 1998. i okolnosti pritvora Karine Slivenko od 16.-17. ožujka 1999 predstavljaju neljudsko i ponižavajuće postupanje, koje zabranjuje čl. 3. *Konvencije.*

7. Tatjana i Karina Slivenko tvrde, da je njihovo uhićenje bilo samovoljno i nezakonito, te da im uz sav trud nije uspjelo pokrenuti sudsko preispitivanje zakonitosti uhićenja, zbog čega smatraju da predleži povreda njihovih prava sadržanih u čl. 1. stavcima 1. i 4. *Konvencije* (pravo na sigurnost i slobodu).

8. U svom pismu sudu dana 10. rujna 2000. tužiteljice nadalje navode povredu čl. 2. *Četvrtog dodatnog protokola konvencije* (sloboda kretanja), a s obzirom na njihovo uhićenje.

9. Osim svega gore navedenog, sva tri tužitelja zahtijevaju pravednu odštetu prema čl. 41. *Konvencije.*

4. Razlozi za iznimnu važnost ovog slučaja

B) *Dana 23. travnja Ruska federacija je izrazila svoju želju, da prema čl. 36 st. 1. Konvencije bude uključena kao treća strana u sporu. Dana 14. lipnja 2001. donesena je odluka da u ovom postupku sudi Veliko vijeće.*

Baš ovom postupku pridana je tolika važnost iz prvenstveno dva razloga:

1. Rusija po prvi put nastupa pred međunarodnim sudom u obrani prava jednog svog državljanina.

2. O ishodu ovog postupka ovisi sudbina daljnjih 19 tužbi ruskih državljana protiv Letonije, koje su već predane sudu, a koje trenutno ne obrađuje tajništvo suda.

Do angažmana Rusije u ovom postupku je navodno došlo preko molbe, koju je u svezi s ovim slučajem Tatjana Slivenko uputila predsjedniku Putinu.

5. Neka proceduralna pitanja

O ovom slučaju raspravljalo se pred Velikim vijećem. koje čini 17 sudaca. Ovo vijeće je značajno prošireno u odnosu na uobičajena vijeća u kojima odlučuje 7 sudaca. U slučajevima u kojima odlučivanje o pravnoj stvari pokreće dalekosežna pitanja tumačenja konvencije ili dopunskih protokola ili u kojima se pak ne može isključiti mogućnost da donesena odluka možda vodi u odstupanje od prijašnjih odluka suda, sudsko vijeće koje je zapravo nadležno može stvar prenijeti pred Veliko vijeće. Upravo to se i dogodilo u slučaju Slivenko što govori o shvaćanju znatne važnosti slučaja iz pozicije samog suda.

Službeni jezici suda su samo francuski i engleski. Redoviti opseg prevoditeljskih poslova (i time

povezani odgovarajući troškovi) znatno je manji nego kod institucija EU-a. Kako tužitelji, osobito kod individualnih tužbi ne bi dolazili u nepovoljniji položaj, sud može na zahtjev stranke dozvoliti da se pismeni podnesci dostavljaju na jednom od jezika dotične zemlje. Isto to vrijedi i za usmeno izlaganje na sudskoj raspravi. Prevodi se ipak samo s jezika te zemlje na engleski i francuski. Za razumijevanje tijeka rasprave stranke su upućene na vlastite prevoditelje. Ova okolnost je u slučaju Slivenko i dr. očigledno dovela do toga, da tužiteljice unatoč svojoj neposrednoj nazočnosti nisu mogle izravno pratiti tijek događaja na sudskoj raspravi. Samo njihov odvjetnik Asnis je imao prijevod osobne prevoditeljice.

Nakon ulaska sudaca u dvoranu i službenog otvaranja rasprave uslijedilo je iznošenje stavova stranaka u sporu. Prva je riječ imala gđa. Kristina Malinovska u svojstvu zastupnice letonske vlade. Nakon nje govorio je gospodin Aleksandar Asnis, odvjetnik iz Moskve u svojstvu zastupnika tužitelja. Nakon gospodina Asnisa svoje uvodno izlaganje imao je zastupnik ruske vlade gosp. Pavel Laptev.

U ovom sažetku ne bih dublje ulazio u to što su pojedini zastupnici stranaka govorili u svojim izlaganjima već bih se više usredotočio na **dodatna pitanja sudaca** koja su uslijedila u nastavku rasprave:

1. Sudac Lorenzen: Kakva razlika je postojala odnosno još uvijek postoji u pravnom postupku prema strancima, a između (nekadašnjih) ruskih odnosno sovjetskih vojnih osoba i civila u Letoniji? U kolikoj mjeri su tužitelji bili integrirani u letonsko društvo; koji podaci se mogu dati o znanju letonskog jezika, o načinu života tužitelja i o stvarnim potrebama za njegom roditelja Tatjane Slivenko?
2. Sudac Maruste: Odgovara li činjenicama tvrdnja da su imena tužitelja bila na listi osoba koju je sastavila ruska strana, a koje osobe su u izvršavanju rusko-letonskog sporazuma o povlačenju trupa morale napustiti Letoniju?
3. Sudac Barreto: Na koji način se vršila dodjela stambenog prostora ruskim odnosno sovjetskim vojnim osobama; jesu li za ove grupe osoba postojali posebni uvjeti? Čije državljanstvo imaju tužiteljice? Ukoliko imaju rusko državljanstvo, na koji način su ga stekle?
4. Sudac Kovler: Je li prilikom uhićenja tužiteljica, za vrijeme i nakon njihovog odlaska iz Letonije od strane letonskih vlasti, oštećena njihova imovina?
5. Sutkinja Stražnicka: Jesu li za ruske odnosno sovjetske vojne osobe postojali specijalni registri za prijave ili su oni bili zajednički za sve osobe koje žive u Letoniji?
6. Sudac Greve: Jesu li postojali različiti pravni sustavi za vojne osobe i obično stanovništvo u Letoniji odnosno u Letoniji u sastavu SSSR-a? Jesu li vojne osobe uživale posebni status obzirom na stambeni prostor i socijalnu skrb?
7. Sudac Makarczuk: Jesu li sklopljeni daljnji posebni sporazumi između Letonije i Rusije o povlačenju trupa i primjeni ovog prvog sporazuma? Koja su imena uključena na listu od 31. ožujka 1994?

Nakon pitanja sudaca uslijedila je pauza. U nastavku rasprave stranke su odgovorile na postavljena pitanja, ukoliko davanje odgovora nije zahtijevalo nikakvu dodatnu pripravu ili prilaganje dokumenata. Zastupnik tužiteljia, gospodin Asnis je iskoristio u potpunosti mogućnost naknadnog davanja odgovora pa nije izravno odgovorio ni na jedno postavljeno pitanje. Gđa. Malinovska, predstavnica letonske

vlade je na neka pitanja odgovorila (u što ne želim ovdje dublje ulaziti), a za neka se poslužila istom mogućnošću koju je iskoristio gospodin Asnis. Predstavnik ruske vlade, gospodin Laptev je vrlo malo odgovarao na pitanja, a puno više je iskoristio priliku za produbljivanje i ponavljanje svojih već prije iznesenih stavova o političkom značaju slučaja Slivenko i o različitim aspektima rusko-letonskih odnosa u svezi sa sporazumom o povlačenju trupa.

Dodatak

Tužba obitelji Slivenko proglašena je dopuštenom 23. siječnja 2002. godine u onom dijelu koji se tiče povreda članaka 5., 8. i 14. Europske konvencije o ljudskim pravima navedenih od T. i K. Slivenko.

Nedopuštenima su proglašeni zahtjevi T. i K. Slivenko u odnosu na ostale povrede prava iz Konvencije, budući da prema mišljenju suda nije bilo povrede vlasništva, rok za žalbu je istekao, a područje koje odgovarajuće norme Konvencije štite nije bilo povrijeđeno odnosno izlaganje tužiteljica nije bilo dostatno utemeljeno. Odbačeni su također i zahtjevi N. Slivenka, jer njegovo vlasništvo nije bilo povrijeđeno, te i stoga što je on napustio Letonije još prije nego je u toj državi Konvencija stupila na snagu (28. lipnja 1997. godine).

Tome je prethodila tvrdnja suda, da on protivno zahtjevu letonske strane, zapravo može preispitivati sukladnost mjera koje su provedene tijekom provedbe sporazuma o povlačenju trupa iz 1994. godine s pravima iz Konvencije.

Nakon toga su stranke imale tri mjeseca vremena za postizanje mirne nagodbe. Činilo se vjerojatnim da će Letonija nastojati postići mirnu nagodbu kako bi spriječila donosenje presude u korist obitelji Slivenko, a samim time i prerastanje ovog slučaja u presedan. Upitno je bilo i da li bi tužitelji ustrajali na donošenju presude u slučaju probitačne ponude letonske strane.

Budući da do mirne nagodbe nije došlo, sud će nadalje preispitivati utemeljenost tužbi i donjeti odluku o činjenicama. Pri tome treba naglasiti da je u slučaju došlo do neočekivanog razvoja situacije: tužitelji i Rusija optužili su letonsku stranu za krivotvorenje potpisa tužiteljice T. Slivenko na formularu ureda za prijavu stanovništva ispunjenog 1993. godine, u kojem je navodno, a prema argumentaciji letonske strane T. Slivenko zatajila prijašnju službu svoga supruga u vojsci SSSR-a. Rusija je zatražila neovisno preispitivanje svih dokaznih materijala. Sud je ovaj zahtjev odbio 26. 07. 2002. godine.

Presuda u ovom slučaju do sredine prosinca 2002. godine još uvijek nije donesena.

Europäische Grenzen für den deutschen Staatsschutz?*

Zum Radikalenerlaß-Urteil des EuGHMR (Fall Vogt) vom 26.9.1995

Prof. Dr. Herwig Roggemann, Freie Universität Berlin

I. Zur Bedeutung der Entscheidung

Mit seinem Urteil im Fall Vogt entschied der Europäische Gerichtshof für Menschenrechte (EuGHMR) am 26.9.1995 nicht nur einen bis zuletzt in besonderem Maße streitigen Rechtsfall, sondern er schrieb zugleich einen kritischen Beitrag zu einem Stück deutscher Rechtsgeschichte, die noch Gegenwart ist: dem Umgang mit Radikalen, Extremisten und alternativen Oppositionellen insbesondere sozialistischer Ausrichtung im politischen Prozeß der alten und neuen Bundesrepublik Deutschland.

Das Vogt-Urteil verdient mehr Aufmerksamkeit, als ihm bisher zuteil wurde, geht es doch darum, daß die jahre- bis jahrzehntelang die Verwaltungs- und Gerichtspraxis beherrschende sowie die wissenschaftliche Diskussion beschäftigende Begründung und Durchsetzung des Radikalenerlasses von 1972 und inhaltlich entsprechender Bestimmungen der Beamtengesetze des Bundes und der Länder sich aus Sicht der EuGHMR als unvereinbar mit europäischen Menschenrechtsstandards und damit als rechtswidrig darstellen.

Das Urteil des EuGHMR ist mit der denkbar knappen Mehrheit von einer Richterstimme, d.h. mit 10:9 Stimmen gefällt worden. Das ändert wie auch in vergleichbaren Fällen kontroverser Rechtsfindung durch Richterbestimmungen mit knappen Mehrheiten z.B. des BVerfG, nichts daran, daß dieses Urteil des höchsten Europäischen Gerichts für den Schutz von Menschenrechten rechtskräftig ist, Beachtung verlangt und zur Diskussion herausfordert. Es erschöpft sich nämlich nicht in einem rückwärts gewandten Beitrag zur Aufarbeitung deutscher Rechtspraxis während der Zeit der Zweistaatlichkeit Deutschlands und des ideologischen, politischen und rechtlichen Ost-West-Gegensatzes. Die Entscheidung gewinnt vielmehr unmittelbare Relevanz für kontroverse Rechtsgrundsätze und Verfahren zur personellen Neuordnung des Staatsdienstes, der Justiz und Anwaltschaft in den neuen Bundesländern im Prozeß der deutschen Einigung. Sie ist auch in dieser Bedeutung bereits von deutschen Gerichten erkannt und in ihre Entscheidungsfindung einbezogen worden.

Das Vogt-Urteil ist im Zusammenhang mit ähnlichen Rechtsstreitigkeiten zu sehen, von denen nur wenige ebenfalls bis vor den EuGHMR gelangt sind, auf die kurz einzugehen ist (II.). Die Entscheidung berührt grundlegende Fragen zum Verhältnis von individuellen Freiheitsrechten und Staatsschutz, d.h. nach Grundlagen und Grenzen des straf- und verwaltungsrechtlichen Staatsschutzes in der wehrhaften Demokratie der alten und neuen Bundesrepublik und veranlaßt zu einem Rückblick auf den Radikalenerlaß und die Kontroversen um seine Handhabung (III.). Die Kritik des EuGHMR an der deutschen Praxis verwaltungsrechtlicher Beschränkung politischer Freiheiten systemkritischer und radikaler Opposition (IV.) stellt zugleich einen Beitrag zur Diskussion um die

Integration früherer Mitglieder des Staatspartei SED und (politischer) Funktionsträger der ehem. DDR im Prozeß der deutschen Einheit dar (V.) und veranlaßt zur Frage nach den Rechtswirkungen des Urteils und den europäischen Grenzen deutschen Staats- und Demokratieschutzes (VI.).

II. Die Streitfälle

1. Der Fall Vogt

Die Lehrerin *Vogt*, Studienrätin für Deutsch und Französisch an einem staatlichen Gymnasium im Bundesland Niedersachsen, war zunächst sei 1979 als Beamtin auf Lebenszeit im Schuldienst tätig und erfreute sich bei Schülern, Eltern und Kollegen allgemeiner Wertschätzung. Im Jahre 1982 wurde ein Disziplinarverfahren gegen sie mit der Begründung eingeleitet, sie sei ihrer politischen Treuepflicht nicht nachgekommen, weil sie sich an politischen Aktivitäten der DKP beteiligt, für diese Flugblätter verteilt, sie auf Sitzungen vertreten und für sie bei Landtags- und Bundestagswahlen kandidiert habe. Wegen dieser und weiterer Aktivitäten als Kreisvorsitzende und Vorstandsmitglieder der Bezirksorganisation wurde Frau Vogt zunächst vom Dienst suspendiert und 1986 durch Entscheidung der Disziplinarkammer des VG Oldenburg aus dem Dienstverhältnis entlassen. Gegen die Zurückweisung der Berufung durch den Niedersächsischen Disziplinarhof im Jahre 1989 legte sie Verfassungsbeschwerde ein, deren Annahme vom BVerfG 1990 mangels Erfolgsaussicht abgelehnt wurde. Die daraufhin 1991 eingelegte Beschwerde bei der Europäischen Kommission für Menschenrechte (EKMR) wurde 1992 von der Kommission für zulässig erklärt. Deren Mitglieder sahen 1993 in ihrem Bericht mit großer Mehrheit, d.h. mit 13:1 Stimmen einen Verstoß gegen Art. 10 (Meinungsfreiheit) und Art. 11 (Vereinigungsfreiheit) der Europäischen Konvention zum Schutze der Menschenrechte und Grundfreiheiten von 1950 als gegeben an. Dieser Beurteilung schloß sich der EuGHMR 1995 an.

In welchem Maße diese Entscheidung umstritten war, zeigen die ausführlichen abweichenden Meinungen aller überstimmten Richter, von denen acht gemeinsam votierten. Kurz nachdem Frau Vogt Beschwerde bei dem EuGHMR eingelegt hatte, wurde sie 1991 wieder in den Schuldienst eingestellt. Die Niedersächsische Landesregierung hatte zuvor den „Radikalenerlaß“ außer Kraft gesetzt. Eine Regelung der von Frau Vogt geltend gemachten Entschädigungsansprüche steht noch aus. Der insgesamt fast eineinhalb Jahrzehnte andauernde rechtsstreit hat dami noch kein Ende gefunden.

2.

Andere Fälle

Zu Beginn seiner Begründung weist der EuGHMR auf die auch in den abweichenden Meinungen angesprochenen, vor einem Jahrzehnt entscheidenen Parallelfälle Glasenapp und Kosiek hin. Im Fall *Glasenapp* hatten ebenfalls eine Lehrerin und im Fall *Kosiek* ein Dozent den EuGHMR wegen der Nichtübernahme in den öffentlichen Dienst angerufen. Die Beschwerden waren jedoch in beiden Fällen vom EuGHMR mit der Begründung zurückgewiesen worden, der hier strittige Zugang zum öffentlichen Dienst und folglich auch die Zugangsvoraussetzungen seien von den Rechtsgarantien der EMRK – im Gegensatz zu Art. 21 Abs. 2 IPBPR – nicht umfaßt, eine Verletzung der Art. 10 und 11 der EMRK daher nicht gegeben.

3. Wandel der Entscheidungsmaßtäbe?

Diese damaligen Differenzierungsversuche wirken angesichts der heutigen Begründung für die Anwendbarkeit des Art. 10 EMRK wenig überzeugend. Sie vermitteln eher den Eindruck, als sei der EuGHMR geneigt, an Grundlagen und Verfahren des Staatsschutzes bei der Handhabung persönlicher und politischer Einstellungsvoraussetzungen für den öffentlichen Dienst im vereinigten Deutschland strengere Anforderungen zu stellen als zuvor an die (Alt)Bundesrepublik im Zeichen der Ost-West-Auseinandersetzung. Zugleich könnte das Urteil ein Indiz dafür sein, daß in Europa nach Wegfall des „Eisernen Vorhangs“ und der Ost-West-Konfrontation und im Zuge der „Osterweiterung“ der EU und des Europarates sowie mit wachsender Richterzahl der EMRK und des EuGHMR aus osteuropäischen Ländern sich auch die Beurteilungsmaßstäbe verschieben könnten: weg von einem allzu normativistischen deutschen Antikommunismus und hin zu einer gesamteuropäischen liberalen Menschenrechtsauffassung im Sinne eines offeneren politischen Pluralismus.

III. Staatsschutz vor und nach der deutschen Einheit

1. Grundlagen und Grenzen

Begründungen, Verfahren und Umfang des Staatsschutzes auf den Rechtsebenen des Strafrechts ebenso wie des Verfassungs- und Verwaltungsrechts waren während der jahrzehntelangen Existenz der beiden deutschen Staaten und ihrer konträren politischen Systeme ständig in besonderem Maße kontrovers. Beide politischen Systeme und Verfassungsordnungen, hervorgegangen aus den Besatzungsregimen nach dem Zweiten Weltkrieg, verstanden sich als *Gegenverfassungen* in mehrfachem Sinne: gegenüber dem überwundenen nationalsozialistischen Unrechtsstaat: gegenüber vorangegangenen und gescheiterten Demokratieversuch von Weimar und vor allem im Verhältnis zueinander. Nicht nur das früh für Machtdurchsetzung und Machterhaltung der Staatspartei instrumentalisierte – wenn sich auch keineswegs ausschließlich darin erschöpfende – sozialistische Rechtssystem der DDR, auch die freiheitlich-demokratische Verfassungs- und Rechtsordnung der (Alt)Bundesrepublik war in das Spannungsfeld der gegensätzlichen politischen Systeme und deren Wertordnungen eingebunden. Die schlichte retrospektive Entgegensetzung – freiheitlich-demokratischer Rechtsstaat einerseits, diktatorischer Unrechtsstaat anderseits – erfaßt

diese komplexen ideologischen und deutschland-politischen Vorgegebenheiten, in denen sich demokratischer Staatsschutz zu bewähren hatte und sozialistische Staatsinteressen auch jenseits von Rechtsgrenzen durchgesetzt wurden, nicht hinreichend.
Wo im einzelnen die Eingriffsschranken des Staatsschutzes in einer wehrhaften Demokratie durch den Wesengehalt persönlicher und politischer Freiheitsrechte gezogen werden, war und ist in der Bundesrepublik streitig. Die Beurteilung von seiten der Rechtspolitik, aber auch der Rechtsprechung unterlag wechselnden innen-, außen- und vor allem deutschland-politischen Einflüssen.

2. Internationale Kritik an deutscher Praxis

Exemplarisch für die Herausbildung zusätzlicher internationaler, insbesondere menschenrechtlicher Beurteilungsmaßstäbe, die nicht immer mit deutsche Rechtsauffassungen übereinstimmen, ist das Vogt-Urteil des EuGHMR von 1995. Diesem waren andere internationale Verfahren vorangegangen. Erhebliches Aufsehen erregte bereits vor rund zehn Jahren das 1985 eingeleitete verfahren der Internationalen Arbeitsorganisation (ILO), einer Sonderorganisation der UNO mit Sitz in Genf, gegen die Bundesrepublik Deutschland. Der ILO-Schlußbericht von 1987 kritisierte, ohne sich zur deutschen Gesetzgebung zu äußern, die Einstellungs- und Überprüfungspraxis im öffentlichen Dienst in Deutschland aufgrund des Radikalenerlasses als unverhältnismäßig und damit völkerrechtswidrig. Die Bundesregierung wies die Annahme des Berichts und der darin enthaltenen Empfehlungen der ILO, die geforderte Verfassungstreue der Bedinsteten funktionsbezogen zu definieren und damit Raum für Differenzierung zu gewinnen, zurück.
In ihrer Legitimation heftig umstritten war demgegenüber die Initiative eines Dritten Internationalen Russel-Tribunals „Zur Situation der Menschenrechte in der Bundesrepublik Deutschland und Berlin-West“, auf dem 1978 Entstehung, Anwendung und Auswirkung des Radikalenerlasses und seine Vereinbarkeit mit Grund- und Menschenrechten öffentlich erörtert werden sollten.
Weitreichende und mit der früheren deutschen Überprüfungspraxis nicht vereinbare Folgen ergeben sich schließlich aus der Auslegung des Art. 48 Abs. 4 EWGV durch die Kommission und den EuGH, wonach Lehrer, insbesondere auch solche im Staatsdienst, Freizügigkeit innerhalb der EU genießen und spezifisch politische Diskriminierungen durch restriktive politische Einstellungsvoraussetzungen einzelner Länder unzulässig wären.

3. Zur Entwicklung

Mit der Konstituierung der wehrhaften Demokratie hat der Grundgesetzgeber ein dreigleisiges Kontrollmodell verbunden, wonach dem BVerfG Prüfung und Verbot verfassungswidriger politischer Parteien vorbehalten sein soll (Art. 21 Abs. 2 GG), der Exekutive und den Verwaltungsgerichten Überprüfung und verbot politischer Vereinigungen überlassen bleiben (Art. 9 Abs. 2 GG) und für individuelle Verwikungsentscheidungen wegen Grundrechtsmißbrauchs wiederum das BVerfG zuständig ist (Art. 18 GG). Im Zuge seiner strafrechtlichen und verwaltungsrechtlichen Umsetzung wurde dieser Verfassungsrechtsrahmen jedoch durch Gesetzgebung und Rechtsprechung nicht nur

ausgefüllt, sondern deformiert. Das Verwirkungsverfahren wurde praktisch obsolet, und das Parteienprivileg wurde durch eine höchstrichterliche und Verwaltungsrechtspraxis entkräftet, die die von Verfassungs wegen nicht vorgesehene Kategorie der verfassungsfeindlichen, aber vom BVerfG nicht als verfassungswidrig verbotenen und damit legal am politischen Prozeß teilnehmenden politischen Partei erfand, deren Mitglieder und aktive Sympathisanten aber rechtlich erheblich benachteiligt (Ausschluß vom öffentlichen Dienst) wurden.

Wegweisende Bedeutung für politische und rechtliche Auseinandersetzung mit dem damals noch Staatssozialismus der DDR und der kommunistischen Systemopposition in der Bundesrepublik erlangt das kommunistischen Systemopposition in der Bundesrepublik erlangt das KPD-Verbots-Urteil des BVerfG von 1956. Ein Kernsatz, damals und später nicht unbestrittener innenpolitischer und interdeutscher Systemabgrenzung lautete: „Die Diktatur des Proletariats ist mit der freiheitlichen demokratischen Grundordnung des Grundgesetzes unvereinbar. Beide Staatsordnungen schließen einander aus“. Dem folgte zunächst eine Phase ausufernder Strafverfolgung, in deren verlauf der BGH auf der Grundlage dieser Verbotsentscheidung die Strafbarkeit nicht nur aller organisatorischen, sondern auch politischen und ideologischen Kritikansätzen, Aktivitäten und Kontaktnahmen sozialistisch-kommunistischen Inhalts in der (Alt)Bundesrepublik, die dem Verbot der „Gesamtorganisation der SED/KPD“ zuwiderliefen, für strafbar hielt. Das Staatsschutzstrafrecht, anfangs in Gestalt der Blankettstraftatbestände der §§ 42, 47 BVerfGG aF, später der §§ 90a und b sowie 93 StGB aF, weitete sich zu einem „politischen Strafrecht neuer Art“ aus, in dessen Reichweite schließlich auch Reisen und Kontaktaufnahmen mit Verbänden und Organisationen in der DDR. Einfuhr und Vertrieb von DDR-Zeitungen und Schriften wie die deutsche Übersetzung des Parteiprogramms der KPdSU gerieten.

Nachdem das BVerfG bereits 1961 das Organisationsstrafrecht insoweit zurückgenommen hatte, als es die Strafdrohung des § 90a StGB aF (Gründen und Fördern politischer Parteien von deren Verbot) für verfassungswidrig erklärte, begann in der (Alt)Bundesrepublik eine kritische Auseinandersetzung mir Formen und Folgen des politischen Strafrechts, die auch zu einer Konkretisierung und Einengung der Tatbestandsfassungen (in den §§ 84 bis 86a StGB) führte.

Der Schwerpunkt der Auseinandersetzung mit tatsächlich oder vermeintlich staatsgefährdender sozialistischer und kommunistischer Ideologie, Propaganda und Organisation begann sich im Verlauf der von Konfrontation zu Koexistenz übergehenden Politik zwischen den beiden deutschen Staaten vom Strafrecht auf das Verwaltungsrecht zu verlagern, ohne daß die Strafverfolgung kommunistischer Aktivitäten bedeutungslos geworden wäre. Zwar entfiel mit dem Wechsel von der strafrechtlichen auf die verwaltungsrechtliche Ebene der oft fragwürdige strafrechtliche Schuldnachweis, doch blieb die Frage nach dem legitimen Umfang der als Ausgrenzungskriterium erforderten politischen Treuepflicht der Angehörigen im Staatsdienst.

Auf der anderen Seite nahmen in der DDR bis in deren letzte Jahre vor Wende und Beitritt politische Repression duch ständig weiter ausgreifende politische Strafjustiz und allumfassende Überwachungs- und Spitzeltätigkeit des MfS, das sich durck keine Verfassungs- und Rechtsgrenzen gehindert sah.

Ausmaße an, die oft kritisiert, doch erst nach dem Ende der DDR in vollem Umfang sichtbar wurden.

4.

Der Radikalenerlaß

Der Beschluß des Bundeskanzlers und der Regierungschefs der Länder vom 28.1.1972 schuf kein neues Recht, sondern sollte eine möglichst einheitliche Praxis bei der Prüfung und Durchsetzung der von Bewerbern und Bediensteten des öffentlichen Dienstes geforderten politischen Treuepflicht gewährleisten. Der Beschluß, dem bereits ein entsprechender Beschluß der Bundesregierung von 1950 vorangegangen war, hatte folgenden Wortlaut:

„Nach dem Beamtengesetz von Bund und Ländern und den für Angestellte und Arbeiter entsprechend geltenden Bestimmungen sind die Angehörigen des Öffentlichen Dienstes verpflichtet, sich zur freiheitlich-demokratischen Grundordnung im Sinne des Grundgesetzes positiv zu bekennen und für deren Erhaltung einzutreten. Verfassungsfeindliche Bestrebungen stellen eine Verletzung dieser Verpflichtung dar. Die Mitgliedschaft von Angehörigen des öffentlichen Dienstes in Parteien oder Organisationen, die die verfassungsmäßige Ordnung bekämpfen – wie auch die sonstige Förderung solcher Parteien und Organisationen – wird daher in aller Regel zu einem Loyalitätskonflikt führen. Führt das zu einem Pflichtverstoß, so ist im Einzelfall zu entscheiden, welche Maßnahmen der Dienstherr ergreift.

Die Einstellung in den Öffentlichen Dienst setzt nach den genannten Bestimmungen voraus, daß der Bewerber die Gewähr dafür bietet, daß er jederzeit für die freiheitlich-demokratische Grundordnung im Sinne des Grundgesetzes eintritt. Bestehen hieran begründete Zweifel, so rechtfertigen diese in der Regel eine Ablehnung."

Die Bundesregierung beschloß herzu 1976 und 1979 „Grundsätze für die Prüfung der Verfassungstreue", die Bundesländer erließen Verfahrensregelungen und Durchführungs-bestimmungen. Das Erfordernis einer über die inhaltliche gesetzliche Pflichtbindung des Beamtenverhältnisses hiausgehenden **allgemeinen „***identifikatorischen Treuebindung*" und den Verfahrensgrundsatz „*Treuepflicht geht vor Parteienprivileg*" hat das BVerfG mit seinem Grundsatzbeschluß v. 22.5.1975 zu Leitlinien einer insbesondere vom BVerwG und den Verwaltungen in Bund und Ländern ausgebauten politischen Überprüfungspraxis uneinheitlichen, doch insgesamt weitgehenden Umfangs gemacht. In den Jahren 1976 und 1977 werden für den Bereich des Bundes je fünf Zurückweisungen von Bewerbern und fünf Entlassungen berichtet. Insgesamt ist für die Zeit zwischen 1973 und 1980 von ca. 1100 mangels Verfassungstreue, d.h. politischer Eignung abgelehnten Bewerbern für den öffentlichen Dienst auszugehen. Die Zahl der Überprüfungsverfahren ging in die Hunderttausende.

Diese Verfahren der politischen Treueprüfung, die unterschiedlos für alle Bediensteten unabhängig von ihrer konkreten Funktion durchgeführt wurden, haben zu kritischen Kontroversen geführt, die sich über die schrittweise Abschaffung der Überprüfungsverfahren in den einzelnen Bundesländern noch nach der deutschen Einigung fortsetzen.

IV. Die Kritik des EuGHMR

1. Menschenrechtliche Schutzgüter

In einer sorgfältig abwägenden Kritik der Grundsätze und praktischen Handhabung des Radikalenerlasses und des entsprechenden Landesbeamtenrechts prüft der EuGHMR alle auch seit langem in der deutschen Rechtsliteratur kritisierten Problempunkte und Zweifelsfragen beamtenrechtlicher Disziplinarmaßnahmen mangels politischer Verfassungstreue. Der EuGHMR geht dabei in teilweise anderen Prüfschritten vor. Geprüft und bejaht werden Rechtsverletzungen der Art. 10 und 11 EMRK.

Nach kurzen, bejahenden Ausführungen zur Frage, „ob ein Eingriff vorlag", stellt sich für den EuGHMR die Frage, ob die durch tatbestandliche Rechtsverletzung indizierte Rechtswidrigkeit entfällt, weil der Eingriff gerechtfertigt war. Eine Rechtfertigung des rechtsverletzenden Eingriffs setzt aus der Sicht des EuGHMR voraus, daß drei Rechtsfertigungnsmomente kumulativ gegeben sind: Der Eingriff muß a) „vom Gesetz vorgeschrieben", b) ein „berechtigtes Ziel" verfolgen und c) „unentbehrlich in einer demokratischer Gesellschaft" sein. Während die Richter des EuGHMR a) und b) als begründet erachten. Hält Punkt c) aus ihrer Sicht näherer Prüfung nicht stand, und zwar aus sechs Gründen:

1. die *Absolutheit* der Treuepflicht,
2. die Inpflichtnahme *aller* Beamten ohne funktionale Differenzierung,
3. das Erfordernis der Ablehnung *aller* inkriminierten, d.h. von der deutschen Exekutive für verfassungsfeindlich gehaltenen Gruppen und Bewegungen.
4. keine Unterscheidung zwischen Dienst- und Privatleben der betroffenen beamten
5. aus *komparativer Sicht*: kein andere Mitgliedstaat des Europarats verlangt eine ähnlich strenge Treuepflicht
6. auffälig *uneinheitliche und daher ungleiche Anwendung* der Treuepflicht innerhalb Deutschlands.

Die Schwere des die entlassene Lehrerin in ihren Rechten verletzenden Eingriffs durch die Disziplinarmaßnahme sieht der EuGHMR „in keinem Verhältnis zu dem verfolgten berechtigten Ziel: *Wegen Verstoßes gegen das Übermaßverbot* ist die Entlassung aus dem öffentlichen Dienst als rechtswidrig anzusehen. Das Gericht vermißt den Nachweis konkreter verfassungsfeindlicher Haltung oder Äußerungen und bezeichnet mangels Verbotes des DKP durch das BVerfG die entsprechenden DKP-Aktivitäten der betroffenen Lehrerin als „*gänzlich rechtsmäßig*".

2. Wegweiser zum neuen gesamtdeutschen Staatsschutz?

Auch in Anbetracht der in den abweichenden Meinungen der überstimmten Richter geäußerten Gegengründe erscheint die Auffassung des höchsten europäischen Gerichts überzeugend, zumindest vertretbar. Sie gibt Anlaß, alte und neue politische Überprüfungspraxis vor und nach der Vereinigung Deutschlands zu überdenken. Keineswegs kann auch die Rede davon sein, das europäische Gericht habe die spezifischen historischen oder deutschlandspolitischen Erfahrungen und Bedingungen der (Alt)Bundesrepublik verkannt. Der EuGHMR verlangt von Verwaltungen und Gerichten in der

Bundesrepublik nicht mehr. Aber auch nicht weniger als *differenzierte und differezierende Betrachtungs- und Beurteilungsweise*, die auf konkrete Haltungen, Äußerungen und dienstliches sowie außerdienstliches Verhalten der einzelnen Personen und ihrer ausgeübten Funktionen im Staatsdienst und i politischen System bezogen ist. Abstrakt generalisierende Treueforderungen sowie daraus abgeleitete generelle Unwerturteile (DDR als „Unrechtsstaat“) und allgemein gefaßte Ausschlußgründe, die politische mit persönlicher beruflicher Eignung undifferenziert gleichsetzen, sind nicht (mehr) haltbar.

V. Politische Überprüfungen in den neuen Bundesländern

1. Radikalenerlaß in Fortsetzung?

Der während der deutsch-deutschen Konfrontation und späteren zweistaatlichen Koexistenz praktizierte straf- und verwaltungsrechtliche Staatsschutz der (Alt)-Bundesrepublik Deutschland, der sich vorrangig und hauptsächlich gegen die DDR sowie kommunistische und radikal-sozialistische Bestrebungen richtete, erhielt seit 1990 eine unerwartete Aktualität mit der Vereinigung der beiden deutschen Staaten. Zwar ging die „Geschichte des Extremistenbeschlusses“ als „Geschichte seiner beständigen Rücknahme“ mit dem Ende der Zweistaatlichkeit zu Ende. Doch die Frage, ob und unter welchen Voraussetzungen Mitglieder und Funktionsträger der Sozialistischen Einheitspartei, von Staatsorganen und gesellschaftlichen Organisationen, insbesondere „staatsnahe“ Träger des politischen Systems der DDR, aber auch andere Inhaber von Partei und Staatsämtern in den öffentlichen Dienst der gesamtdeutschen Bundesrepublik übernommen oder aufgenommen werden sollten oder hierfür politisch und damit persönlich ungeeignet seien, ist zu einer der zentralen Fragen gesamtdeutscher Integration geworden. Findet die Radikalenerlaß-Praxis im vereinigten Deutschland ihre Fortsetzung unter veränderten Umständen, aber gleichem Vorzeichen einer überwiegend antikommunistisch oder antisozialistisch ausgerichteten Gefahrenabwehr?

2. Der EuGHMR und die deutsche Vergangenheitsverarbeitung

Vergangenheitsverarbeitung mit den Mitteln des Rechts findet auf der Grundlage des EinigungsV von 1990 und nachfolgender Ausführungsgesetze und Verordnungen im Verhältnis zur ehem. DDR – anders als im Verhältnis zum Nationalsozialismus nach 1945/49 – gegenwärtig in umfassender Weise und auf mehreren Rechtsebenen statt:

1. Im Strafrecht durch Strafverfolgung zahlreicher ehemaliger Funktionsträger der DDR wegen begangenen strafbaren Systemunrechts. Hierbei geht es um Tausende von Ermittlungsverfahren sowie Hauptverhandlungen in wesentlichen geringerer zahl wegen Mauerschüssen, Rechtsbeugung, Freiheitsberaubung und anderer Vorwürfe.
2. Im Zivil- und Wirtschaftsrecht durch umfassende Privatisierung und Reprivatisierung von Eigentum und Wirtschaftsgütern.
3. Im Straf- und Verwaltungsrecht durch Rehabilitierungsverfahren zur Aufhebung und teilweisen Wiedergutmachung rechtsstaatswidriger Unrechtsentscheidungen.

4. In Verwaltungs- und Arbeitsrecht, insbesondere im Recht des öffentlichen Dienstes, im Justizwesen aber auch in der Rechtsanwaltschaft durch Überprüfungen von Bewerbern auf ihre persönliche – die politische miteinschließende – Einigung, sowie durch Ausübung von Sonderkündigungsrechten mangels Eignung bereits Bediensteter.

Legitimation, Maßstäbe und Verfahren der strafrechtlichen Verfolgung sind vor allem nach wie vor in hohem Maße kontrovers. Dies gilt rechtspolitisch aus der Sicht der Opfer, der Täter wie der gesamtdeutschen Gesellschaft. Es gilt aber auch rechtsdogmatisch für die Frage nach Rechtsgrundlagen, Beurteilungsmaßstäben und Lösungsversuchen der Rechtsprechung, die mit Hinweisen auf den EinigungsV und Folgeregelungen keineswegs hinreichend beantwortet sind.

Die von der Rechtspraxis entwickelten Argumentationsmuster zum Zusammenhang von persönlicher und politischer Eignung von Amtsbewerbern sowie die Verfahren mit Hilfe von Fragebögen, Anhörungen und Anfragen beim Bundesbeauftragten für die Unterlagen des Staatssicherheits-dienstes haben fragende Kritik an neuen Formen „politischer Säuberung“ des öffentlichen Dienstes hervorgerufen.

Anspruch und Wirklichkeit einer derart umfassenden Verarbeitung der DDR-Vergangenheit, der eine retrospektive Be- und Verurteilung der DDR als Unrechtssystem zugrunde liegt – werde sie nun als „Unrechtsstaat“, „im Kern Unrechtsstaat“ oder „Vor-Rechtsstaat“ bezeichnet -, sind historisch einmalig. Weder nach der militärischen Niederwerfung des Nationalsozialismus seit 1945 noch nach Ende des Staatssozialismus in den ost- und ostmitteleuropäischen Staaten 1989/1990 fand oder findet eine vergleichbar weitgehende Vergangenheitsnachprüfung und Nachverurteilung statt. Vor diesem Hintergrund kann das Vogt-Urteil des EuGHMR als vorsichtige aber unüberhörbare Warnung der europäischen Richter vor normativistischer deutscher Maßlosigkeit gelesen werden. Die Warnung dieser „*Kontrollgerichtsbarkeit*“ sollte schon darum nicht überhört werden, weil auch in weiteren Fällen zu 1. und zu 4. der EuGHMR erneut angerufen werden könnte.

VI. Urteilswirkungen

Die Feststellung des EuGHMR, daß mit der Dienstentlassung der Lehrerin Vogt wegen DKP-Mitgliedschaft und –Aktivitäten europäisches Recht in Gestalt der Menschenrechte auf Meinungs- und Vereinigungsfreiheit verletzt werde, widerspricht der bis dahin in der Bundesrepublik Deutschland herrschenden, wenn auch nicht unstreitigen Rechtsauffassung. Sowohl die Bundesregierung als auch die höchstrichterliche Rspr. hielten entsprechende Vorgehensweise ausnahmslos für rechtsmäßig.

Das Vogt-Urteil, das die angegriffene Disziplinarmaßnahme als unverhältnismäßig schweren Eingriff bezeichnet, stellt ein rechtskräftiges Feststellungsurteil gem. Art. 50 und 52 EMRK über die Konventionswidrigkeit dieser Rechtspraxis dar. Dir Frage, welche Rechtswirkungen den Entscheidungen des internationalen Straßburger Gerichtshofs im einzelnen zukomme, wird von Rspr. und Lit. nicht einheitlich beantwortet. Artikel 53 EMRK verpflichtet zunächst die Konventionsstaaten, sich nach den Gerichtsentscheidungen zu richten. Eine die innerstaatliche Rechtslage unmittelbar

gestaltende (Bildungs-) Wirkung, die die Rechtskraft entgegenstehender innerstaatlicher Gerichtsentscheidungen aufhebt oder zu einer Rechtsänderung führt, kommt den EuGHMR-Entscheidungen daher nicht zu. Neben der *primären Rechtswirkung* möglichst weitgehender Wiedergutmachung durch Naturalrestitution, ggf. verbunden mit Entschädigung (Art. 50 EMRK), entfaltet die Feststellung einer Konventionsverletzung durch den EuGHMR entsprechend dem Grundsatz völkerrechtskonformer Auslegung des nationalen Rechts (Art. 25 GG) jedoch weitere *sekundäre Rechtswirkungen*. So kann eine Entscheidung des EuGHMR die Grundlage einer Verfassungsbeschwerde bilden, da widersprechende Gerichtsentscheidungen die allgemeinen Regeln des Völkerrechts verletzen. Und sie besitzt darüber hinaus anerkannte *„normative Leitfunktionen“*. Mit Recht verstehen die Gerichte der Bundesrepublik, wie kürzlich das LAG Chemnitz, dies bereits als Verpflichtung, die Entscheidungen des EuGHMR und damit auch das Urteil von 1995 bei ihrer Entscheidungsfindung zu berücksichtigen.

Für die weitere Rechtsprechung zur Staatsschutzpraxis im öffentlichen Dienst, insbesondere bei Einstellungs- und Kündigungsverfahren gegenüber Staats- und Parteimitarbeitern der ehem. DDR ergeben sich daraus mehrere Folgerungen:

a) Anstelle einer politisch-normativierenden Wertung hat eine stärker differenzierende Einzelfallprüfung zu treten, die sämtliche vom EuGHMR benannten Kritikpunkte einbezieht.

b) Anstelle eines Einheitskriteriums für den öffentlichen Dienst hat eine funktionale Unterscheidung nach übertragenen dienstlichen Aufgaben zu treten, die eine angemessene Differenzierung bei der Beurteilung der persönlichen Einigung von Stellenbewerbern oder Stelleninhabern erlaubt.

c) Zwischen persönlichem, privatem Lebensbereich und beruflichem Tätigkeitsbereich und dessen spezifischen Anforderungen ist weitgehender als bisher bei der Eignungsentscheidung zu trennen.

Die Tatsache, daß generalisierende Unwerturteile über Nationalsozialismus einerseits und Staatssozialismus der DDR anderseits den durchaus differenten, unvergleichbaren Unrechtsgehalt beider Systeme und des Verhaltens ihrer jeweils staatsnahen Funktionsträger sowie Staatsbediensteten nich angemessen erfassen, hat den BGH veranlaßt, die Unvergleichbarkeit beider politischer Systeme ausdrücklich zu betonen. Und gerade auch unter Berücksichtigung dieser historischen Dimensionen sah sich der EuGHMR veranlaßt, die Unvergleichbarkeit beider politischer Systeme ausdrücklich zu betonen. Und gerade auch unter Berücksichtigung dieser historischen Dimensionen sah sich der EuGHMR veranlaßt, die Unverhältnismäßigkeit der Abwehrreaktion zu kritisieren. Das Urteil gibt daher Anlaß, in der Praxis eines freiheitlich-demokratischen Staatsschutzes künftig mehr systemkritische Toleranz zuzulassen und zwischen staatsgefährdenden neonationalistischen Bestrebungen und sozialistischer Systemkritik zu unterscheiden.

Das Vogt-Urteil ist aber zugleich als Herausforderung zu lesen, Methoden und Prioritäten bisheriger Staatsschutzpraxis im geteilten und im vereinten Deutschland neu zu durchdenken. Die kurze Antwort der Bundesregierung auf eine kleine Anfrage des Abgeordneten U. J. Heuer und der Gruppe der PDS, es bestehe „keine Veranlassung“, aus der Entscheidung allgemeine Konsequenzen zu ziehen“, wird dem Gewicht der Entscheidung nicht gerecht.

Literaturhinweise - Literatura

- N. Vajić, *Duljina sudskog postupka u Hrvatskoj i praksa Europskog suda za ljudska prava,* "Zbornik Pravnog fakulteta u Zagrebu", god. 51., 2001., br. 5, str. 981.-990.
- M. Tadić, *Podnošenje zahtjeva Europskom sudu u Strasburu*, "Pravni savjetnik", god. I., 2001., br. 10, str. 34.-48.
- D. Maričić, *Završetak postupka i pravni učinci presuda Europskog suda za ljudska prava*, "Hrvatska pravna revija", god. II, 2002., br. 1, str. 100.-105.
- J. Crnić, *Iscrpljivanje domaćih pravnih sredstava - uvjet dopuštenosti postupka pred Europskom komisijom za ljudska prava (i Europskim sudom za ljudska prava)*, "Informator", br. 4587. od 21. veljače 1998. god.
- J. Kregar - I. Goranić, *Uvjeti dopuštenosti postupka pred Europskim sudom za ljudska prava,* "Informator", br. 4580. od 28. siječnja 1988. god.
- I. Goranić, *Okončanje postupka unutar domaćeg pravnog sustava kao uvjet dopuštenosti tužbe Europskoj komisiji i Europskom sudu za ljudska prava,* "Vladavina prava", 1998., god. II, br. 1, str. 39.
- A. Uzelac, *Hrvatsko procesno pravo i jamstvo "pravičnog postupka" iz Europske konvencije za zaštitu ljudskih prava i temeljnih sloboda*, "Zbornik Pravnog fakulteta Sveučilišta u Rijeci", v. 19, Supplement, 1998., str. 1005.
- J. Garašić, *O upravnom sporu pred Upravnim sudom Republike Hrvatske u svjetlu čl. 6. Europske konvencije za zaštitu ljudskih prava i temeljnih sloboda*, "Zbornik Pravnog fakulteta Sveučilišta u Rijeci", v. 19, Supplement, 1998., str. 967.
- K. Sajko, *Izbor međunarodnih ugovora Vijeća Europe*, Zagreb, 2001.
- Ć. Sadiković, *Evropsko pravo ljudskih prava*, Sarajevo, 2001.
- P. van Dijk - G. J. H. van Hoof, *Teorija i praksa Evropske konvencije o ljudskim pravima*, Sarajevo, 2001.
- Miodrag Simović, *Usklađenosti zakonodavstva Republike Srpske sa Evropskom konvencijom o zaštiti ljudskih prava i osnovnih sloboda*, "Pravni savjetnik", godina I, 2001., br. 8, str. 97.-105.
- Ivana Goranić, *Praksa Europske komisije i Suda za ljudska prava i zaštita prava na slobodu izražavanja*, "Vladavina prava", god. III, 1999., br. 2, str. 35.-56.
- Darko Vincek, *Europska konvencija o zaštiti ljudskih prava i temeljnih sloboda - I. dio*, "Informator", br. 5002. od 17. svibnja 2002. god., str. 21.-25.
- Darko Vincek, *Europska konvencija o zaštiti ljudskih prava i temeljnih sloboda - II. dio*, "Informator", br. 5004. od 17. svibnja 2002. god., str. 10.-14.
- Darko Vincek, *Europska konvencija o zaštiti ljudskih prava i temeljnih sloboda - III. dio*, "Informator", br. 5006. od 31. svibnja 2002. god., str. 7.-12.
- Đuro Sessa, *Dostignuća Vijeća Europe u neovisnosti sudstva*, "Hrvatska pravna revija", god. I, 2001., br. 3, str. 118.-125.
- Nikola Gavella, *O privatnopravnom aspektu djelovanja Europske konvencije za zaštitu ljudskih*

prava i temeljnih sloboda te dodatnih protokola s osobitim osvrtom na jamstvo vlasništva, "Pravo i porezi", god. X, 2001., br. 11, str. 3.-8.

- Mato Tadić, *Europska konvencija za zaštitu ljudskih prava i temeljnih sloboda - kroz teoriju i sudsku praksu*, "Pravni savjetnik", godina II, 2002., br. 2, stre. 95.-103.
- Duško Medić, *Zaštita ljudskih prava u Bosni i Hercegovini sa akcentom na Evropsku konvenciju o zaštiti ljudskih prava i osnovnih sloboda*, "Pravni savjetnik", godina I, 2001., br. 12, str. 112.-117.
- Marijan Hanžeković, *Dostupnost pravdi - Fikcija i praksa*, "Odvjetnik", godište 74, 2001., br. 9-10, str. 20.-22.
- Dragica Wedam-Lukič, *Arbitraža i pravo na sudsku zaštitu prema članku 6. Evropske konvencije o ljudskim pravima*, referat na savjetovanju "Četvrti hrvatski arbitražni dani - Arbitraža u post-dajtonskoj Hrvatskoj i Bosni i Hercegovini", Zagreb, 1996.

* * *

- JP. van Dijk - G. J. H. van Hoof, *Theory and Practice of the European Convention on Human Rights,* Kluwer Law and Taxation Publisher, Deventer-Boston, 1990.
- D. J. Harris - M. O'Boyle - C. Warbrick, *Law of the European Convention on Human Rights*, London-Dublin-Edinburg, Butterworts, 1995.
- B. Conforti - F. Francioni, *Enforcing International Human Rights in Domestic Courts*, M. Nijhoff Publ., The Hague, 1997.
- H. C. Yourow, *The Margin of Appreciation Doctrine in the Dynamics of European Human Rights Jurisprudence*, M. Nijhoff Publ., The Hague, 1996.
- D. Gomien - D Harris - L. Zwaak, *Law and practice of the European Convention on Human Rights and the European Social Charter*, Council of Europe Publ., Strasbourg, 1996.
- J. Velu - R. Ergec, *La Convention europeenne des droits de l'homme*, Bruylant, Bruxeelles, 1990.
- Klugmann, Marcel, Europäische Menschenrechtskonvention und antiterroristische Maßnahmen, Lang, Frankfurt am Main, 2002.
- Kreicke, Helmut, Art. 7 EMRK und die Gewaltakten an der deutsch-deutschen Grenze, Nomos-Verl.-Ges., Baden-Baden, 2002.
- Leeb, David, Die innerstaatliche Umsetzung des Feststellungsurteile des Europäischen Gerichtshofs für Menschenrechte im entschiedenen Fall, Trauner, Linz, 2001.
- Rupp-Swenty, Anette, Die Doktrin von der margin of appreciation in der Rechtsprechung des Europäischen Gerichtshofs für Menschenrechte, VVF, München, 1999.
- Kleine-Cosack, Michael, Verfassungsbeschwerden und Menschenrechtsbeschwerde, Dt. Anwaltverl., 2001.
- Esser, Robert, Auf dem Weg zu einem europäischen Strafverfahrensrecht. Die grundlagen im Spiegel der Rechtsprechung des Europäischen Gerichtshofs für Menschenrechte in Straßburg, de Gruyter Verlag, Berlin, 2002.

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Berlin 2001, 69 str.

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Berlin 2002, 141 str.

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Berlin 2002, 116 str.

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Berlin 2003, 144 str.