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Article

*183 The **European Court** of **Human Rights**: The Past, the Present, the Future

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President Luzius Wildhaber provides an overview of the past, present and future role of the **European Court** of **Human Rights**. At the beginning of the 20th century, sovereign States were thought to have the absolute right to ignore democratic and **human** rights. In contrast, modern sovereignty requires respect for **human** and minority rights, democracy and the rule of law. The 1950 **European** Convention on **Human** Rights is administered by the **European Court** of **Human Rights**, which was set up in 1998. This Court has interpreted the Convention to make it accessible and give it practical effect. The Court is becoming a quasi-constitutional Court which arguably should have authority to concentrate on building up general constitutional principles of human rights protection, rather than focusing on answering each of the thousands of individual complaints. The President discusses the interaction of the Convention with the emerging European constitutional framework. He reviews a series of recent judgments explaining the implications the Convention for the political systems of the Contracting States, particularly the notion that pluralist democracy is the only political system that is compatible with the Convention.

***184** In introducing the **European Court** of **Human Rights**, I shall begin with a few general remarks, which will first involve a look back into **history**.

1. HISTORY

We began the 20th century with an international law that viewed only sovereign States as actors, unbridled and uncontrolled, entitled to go to war, and also entitled to treat citizens and foreigners alike as objects, whose legal status and whose human rights were defined solely by national law. We end the 20th and begin the 21st century with individuals that have become subjects of international law and a European Court of Human Rights which is the most spectacular illustration of this change in paradigms. [FN1]

The notion of sovereignty too has undergone a change. At the beginning of the 20th century, sovereignty of States used to be misinterpreted and misunderstood as an absolute right to trample upon international obligations, upon democracy, human and minority rights. No wonder that Prof. Karl Deutsch remarked that "a nation-state is a group of people who are united by a common error concerning their origin and a common dislike of their neighbours". This should no longer be so. Instead, modern sovereignty should be understood as requiring respect for, rather than the breach of, human rights and minority rights, democracy and the rule of law.

One of the founding fathers of the European Convention on Human Rights, the Frenchman Pierre-Henri Teitgen, explained this in 1949 in moving words. He spoke about the time when he was in the Gestapo prisons while one of his brothers was at Dachau and one of his brothers-***185** in-law was dying at Mauthausen. He said: "I think we can now ... confront 'reasons of State' with the only sovereignty worth dying for, worthy in all circumstances of being defended, respected and safeguarded -- the sovereignty of justice and of law." [FN2]

Let me look even farther back into history. Already in antiquity and medieval times, European political the-

ories endeavoured to moderate the power of the rulers and to realise justice. Bracton demanded in 1250 the rule of law and the restriction of the unbridled State and the King. Even the King, he said, was subject to God and the law, because only the law made him King (quia lex facit regem). For there was no King, where arbitrariness and not the law ruled. [FN3]

Let me now bring you back to the year of 1950 and the signing ceremony of the European Convention on Human Rights in Rome. A small group of far-sighted, idealistic lawyers, determined to prevent the recurrence of the devastation of war and the attendant horrendous crimes, argued that the best way to achieve that end was to guarantee respect for democracy and the rule of law at a national level. They realised that only by the collective enforcement of fundamental rights was it possible to secure the common minimum standards that form the basis of democratic society. For the first time individuals could challenge the actions of Governments before an international mechanism under a procedure leading to a binding judicial decision. The fact that we take this for granted today in Europe (although not in other continents) is a measure of the progress that has been accomplished since then.

In 1998 the Convention system underwent a major reform. The original institutions, the European Court and the Commission of Human Rights, were replaced by a single Court functioning on a full-time basis. The optional elements of the earlier system, the right to individual petition and the acceptance of the Court's jurisdiction were eliminated; so was the Committee of Ministers' adjudicative role. The Convention process, directly accessible to individuals, had become fully judicial in character in accordance with the intentions of the drafters of 1950. The two initial bodies, the Commission from 1954 and the Court from 1959, gave life to the Convention, through their pioneering case law. Their ***186** purposive, autonomous, at times creative interpretation of the Convention enhanced the rights protected to ensure that they had practical effect. Just to take one example, the right of access to a court, a right that lies at the heart of the Convention and a key element of the rule of law, was not expressly mentioned in the due process provision, Article 6 § 1. The Court's observation was of beautiful simplicity: "The fair, public and expeditious characteristics of judicial proceedings are of no value at all if there are no judicial proceedings". [FN4] To this the Court later added that the right of access "would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party". [FN5] On the basis of such case law, the Court established the principle that the Convention is to be interpreted as a living instrument, to be construed in the light of present day conditions.

2. PRESENT

The full-time **European Court** of **Human Rights** which was set up in 1998 under Protocole N° 11 to the **European** Convention on **Human** Rights is the biggest international Court that has ever existed. It is composed of a number of judges equal to that of the Contracting States.

With the sole exception of Belarus, all **European** States are today members of the Council of Europe. Of these, all but Monaco, which was recently admitted, have ratified the **European** Convention on **Human** Rights, whose protection now stretches from Iceland to Turkey, from Lisbon to Wladúwostok, from Riga to Malta, but also from Chechnya to the Basque region, from Northern Ireland to Cyprus and Nagorno-Karabach.

Whereas the official languages of the Court are English and French, applications may be drafted in any one of the official languages of the Contracting States, and there are at present 41 official languages in these States.

The Court receives around 900 letters per day and some 250 international telephone calls a day. Its internet site was visited by 45 million hits in 2003. In the past 5 years, the number of applications has increased by

about 15% in comparison with each preceding year. We now have ***187** before us some 78,000 pending applications. In the year of 2004, we received close to 45,000 applications. We issued some 17,300 decisions and 700 judgments on the merits. The highest number of cases have come from Russia, Poland, Turkey and Romania (the so-called "big four"), [FN6] followed by the Ukraine, France, Italy and Germany. These "big eight" countries account for some 75% of all applications that reach our Court. Some 63% of all cases have come from the 21 new member states of Central and Eastern Europe, 12% from Turkey and only some 25% from the traditional Western European States.

All sorts of cases reach our Court. Issues of the Communist nationalizations of property in Czechoslovakia, Slovakia and Eastern Germany and the question of whether the Czech Republic after the fall of the Iron Curtain could restrict the restitution of nationalized goods to Czech nationals only were declared inadmissible. [FN7] Two applicants elected to the parliament of San Marino refused to take the required oath on the Holy Gospels and were disqualified from sitting in the parliament, which our Court qualified as a violation of the freedom of religion in the Buscarini case. [FN8] A French-Moroccan drug trafficker held in custody was beaten up so severely by the police that medical certificates listed about 40 visible injuries all over his body, for which no plausible explanation was given, so that our Court had to decide in the Selmouni case that he had been tortured. [FN9] The Swiss Animal Protection Society wanted to run an ad on TV, showing piglets and encouraging people to "eat less meat"; the TV station refused saying this was "political" speech, whereas, if people had been invited to "eat more meat", this would have been "commercial" speech and therefore permissible; our Court saw in this a violation of the freedom of expression in the case of VgT Verein gegen Tierfabriken. [FN10]

***188** The Georgian applicant Assanidze sat lawlessly in prison in the Autonomous Region of Ajaria. The Georgian Government's efforts to secure his release remained unsuccessful. Our Court distinguished between imputability and responsibility, considering that the Ajarian authorities' refusal to set free Assanidze was undoubtedly imputable to them, but that nevertheless under the system of the Convention the Georgian central Government remained responsible for such failures. The Court also ordered the immediate release of the imprisoned applicant, an order which was executed within one or two days. [FN11]

Our Court endeavours to reach conclusions and judgments which will appear as a balanced and wise approach to a pan-European future. We are a part of the pluralistic and democratic society which we describe in our own judgments. We are not final because we are infallible, but we are indeed final in the same sense as any national supreme or constitutional court.

Functionally speaking, we are becoming a European quasi-Constitutional Court. Of course, this raises the question whether our Court should be allowed to concentrate on building up general (constitutional) principles of human rights protection or whether it should focus on answering each individual complaint. [FN12] I think that given the overburdening of the Court the answer can only lie in emphasizing the subsidiarity character of the Convention system. Only if the national Governments and Parliaments and of course the national courts apply the Convention and the case law built up by our Court faithfully and fully, can the system be made to work. And only if we accept that an understaffed Court like ours is simply not able to cope with 45,000 applications per year, nor with 78,000 cases pending, 4,500 of which constitute, in our own reckoning, backlog, do we get a realistic sense how the dilemma between constitutional functions or individual petition rights should be solved.

3. THE NEW EUROPEAN CONSTITUTIONAL ARCHITECTURE

The next point I wish to touch upon is the future of the Convention in the light of the constitutional framework now emerging in Europe. ***189** From a human-rights perspective, this raises the issue of how the Convention and the international, European and national legal orders with which it is called upon to coexist will

interact. Each of these legal orders has its own sources of fundamental rights and, if we are to avoid a situation in which rights impede each other or, worse still, relativism gains ground in a domain in which it does not naturally belong, it is vital to maintain a degree of coherence between them.

My starting point is the notion that, like the other international instruments of human-rights protection, the European Convention on Human Rights forms part of international law: all these instruments are derived from international law and have a key role to play within it. In the case of the Convention, this is reflected in a rule established by the Court in its case law: "The Convention should so far as possible be interpreted in harmony with other rules of international law of which it forms part ...". [FN13] At the same time, however, the Court has repeatedly stressed "the Convention's special character as a human rights treaty" [FN14] and its role "as an instrument of European public order (ordre public) for the protection of individual human beings", [FN15] meaning that the Court must interpret the Convention so as to ensure its effectiveness. The Court has explained the rationale behind the special character ascribed to the Convention: "Unlike international treaties of the classic kind, the Convention comprises more than mere reciprocal engagements between Contracting States. It creates, over and above a network of mutual, bilateral undertakings, objective obligations which, in the words of the Preamble benefit from a 'collective enforcement'." [FN16]

This does not, however, mean that the case law is short of examples to show that the Convention is applied within the framework of international law. The best-known cases are undoubtedly those in which the Court has noted that "the Convention has to be interpreted in the light of the rules set out in the Vienna Convention on the Law of Treaties" [FN17] and, in particular, of the rule set out in that Convention that "account is ***190** to be taken of 'any relevant rules of international law applicable in the relations between the parties'". [FN18]

Conversely, as I have said, there have also been cases in which the Court has found it necessary to depart somewhat from the ordinary rules of international law in order to achieve the effectiveness required by the special character of the Convention. In the Court's own words: "The object and purpose of the Convention ... requires that its provisions be interpreted and applied so as to make its safeguards practical and effective". [FN19]

Allow me to return briefly to the notion of "constitutional instrument of European public order (ordre public)" to which I have just referred and which the Court in Strasbourg has used to describe the role of the European Convention on Human Rights. What does it entail? Are we to infer that the Convention is akin to a constitution? To answer that question, we must turn to the relationship between the Convention and the national constitutions of the Contracting States.

What is certain, at any rate, is that through the catalogue of fundamental rights most of them contain, the constitutions of the Contracting States have much in common with the Convention. They thus share with the Convention the same founding ideal, namely the belief in a State order that contributes to individual self-fulfilment through freedom and dignity by protecting the fundamental rights of every man, woman and child.

4. RECENT CASELAW

In a series of important judgments over the past few years, the Court has sought to explain the implications the Convention has for the political systems of the Contracting States and, in particular, the notion that pluralist democracy is the only political system that is compatible with the Convention.

This brings us to the important case of Refah Partisi (Welfare Party) v. Turkey. In an earlier judgment in 1998, in the Turkish Communist Party case, [FN20] the Court had found that democracy appeared to be the sole political model contemplated by the Convention and, consequently, the only one that was compatible

with it. But this raised the question of what that concept meant.

***191** Paradoxically, although most people profess their commitment to democracy, it is in many ways an imprecise notion with an apparent weakness capable of causing it to buckle under pressure. The reason for this is that, by definition, democracy seeks to satisfy the aspirations of the greatest number. Such aspirations are, however, often changeable and even contradictory. This is a factor which in turn leads to a growing number of compromises and increasingly complex mediation, whose impact on the system itself will not always be measurable. The former President of the German Constitutional Court Jutta Limbach recently noted that democracy is subject to constant pressure, as its divergent forces interact to create an unstable equilibrium. [FN21] This, undoubtedly, is especially true at times of conflict and crisis, when democracy has to struggle to meet the rush of challenges posed by globalisation, destruction of the habitat, immigration and terrorism.

It is here that the Court has a role to play in identifying the constituent elements of democracy and in reminding us of the minimum essential requirements of a political system where human rights are respected. In the Refah Partisi (Welfare Party) v. Turkey judgment, [FN22] it carried out a thorough examination of the relationship between the Convention, democracy, political parties and religion. The case concerned the dissolution, by the Turkish Constitutional Court, of a political party, the Welfare Party, on the grounds that it wanted to introduce Shari'a law and a theocratic regime. A Grand Chamber of the Court found unanimously that there had been no violation of Article 11 of the Convention, which protects freedom of association. The judgment provides some elements of an answer to the question which we have raised today concerning the dimensions of the New Europe.

The Court first noted that freedom of thought, religion, expression and association as guaranteed by the Convention could not deprive the authorities of a State in which an association jeopardised that State's institutions, of the right to protect those institutions. It necessarily followed that a political party whose leaders incited to violence, or put forward a policy which failed to respect democracy, or which was aimed at the destruction of democracy and the flouting of the rights and freedoms recognised in a democracy, could not invoke the protection of the Convention. Penalties imposed on those grounds could even, where there ***192** was a sufficiently established and imminent danger for democracy, take the form of preventive intervention.

The Court noted that the leaders of the Welfare Party had pledged to set up a regime based on Shari'a law. It found that Shari'a, as defined by the leaders of the Welfare Party, was incompatible with the fundamental principles of democracy as set forth in the Convention. It considered that "sharia, which faithfully reflects the dogmas and divine rules laid down by religion, is stable and invariable. Principles such as pluralism in the political sphere or the constant evolution of public freedoms have no place in it". [FN23] According to the Court, it was difficult to declare one's respect for democracy and human rights, while at the same time supporting a regime based on Shari'a. Such a regime clearly diverged from Convention values, particularly with regard to its criminal law and criminal procedure, its rules on the legal status of women and the way it intervened in all spheres of private and public life in accordance with religious precepts.

Now let me describe two other important recent cases. The case of Ilascu, Ivantoc, Lesco and Petrov-Popa v. Moldova and Russia [FN24] concerned events that occurred in the "Moldavian Republic of Transdniestria" ("the MRT"), the region of Moldova to the East of the river Dniester known as Transdniestria. This region declared its independence in 1991, which in turn led to a civil war and to the self-proclamation of a breakaway regime. This regime is not recognized by the international community. The case concerned the unlawful detention of the four applicants, following their arrest in 1992 and their subsequent trial by the so-called "Supreme Court of the MRT" and the ill-treatment, inhuman prison conditions and torture inflicted on them during their detention, as well as the death penalty imposed on Mr. Ilascu and the mock executions to which he was subjected.

The European Court of Human Rights established the responsibility of both respondent States (that of Moldova for the period after 2001) and found a violation of Articles 3, 5 and 34 of the Convention.

The Court ordered the immediate release of the applicants still in detention. It emphasised the urgency of this measure in the following terms:

any continuation of the unlawful and arbitrary detention of the ... applicants would necessarily entail a serious prolongation of the violation of Article 5 ***193** found by the Court and a breach of the respondent States' obligation under Article 46 § 1 of the Convention to abide by the Court's judgment. [FN25]

Only two of the four applicants have been released to date. Mr. Ilascu was released in May 2001 and Mr. Lesco at the expiry of the sentence imposed on him by the "Supreme Court of the MRT", in June 2004. The other two applicants, Mr. Ivantoc and Mr. Petrov-Popa, are still in custody.

During the first examination of the case before the Committee of Ministers, the Representative of Moldova stated that the Moldovan authorities had sent letters to the Russian authorities, the Secretary General of the Council of Europe and the Norwegian Chair of the Committee of Ministers, requesting their assistance in obtaining the release of the applicants who were still in detention. However, given the tensions between Moldova and the Transdniestrian breakaway regime, the Moldovan authorities considered that, for the time being, their influence on the separatists on this point was minimal or even non-existent. As regards just satisfaction, the Ministry of Finance had ordered its payment. The Representative of the Russian Federation in the Committee of Ministers emphasised the Russian authorities' disagreement with the judgment on both the legal and political levels and their view that since the applicants' lives were not in danger, the Convention was not pertinent. Concerning possible execution measures or measures already taken, the Russian authorities considered that they were not in a position to execute the judgment, since the use of force to release the applicants was out of the question. Furthermore, the Representative informed the Committee that he had been instructed not to participate in its examination of the case until directed otherwise. He said that the Court's judgment was "inconsistent, controversial, subjective, politically and legally wrong and based on double standards". [FN26] It will therefore be noted that the Court's judgment in the Ilascu case has yet to be fully complied with. In the meantime, Russia has paid the just satisfaction sums awarded by the Court.

The other case which I would like to describe is the case of Broniowski v. Poland. [FN27]

The Broniowski case concerned the Polish State's continued failure to implement the applicant's "right to credit" under Polish legislation. This "right to credit" furnished compensation in respect of property ***194** abandoned by his family at the end of the Second World War in the territories "beyond the Bug River", as a result of the change of boundary between the former USSR and Poland. The Broniowski application was chosen as a "pilot case" since at that time many similar applications were already pending before the Court. The Section relinquished jurisdiction in favour of the Grand Chamber and adjourned the remaining applications pending the outcome of the leading case.

By adopting both the 1985 and 1997 Land Administration Acts, the Polish State reaffirmed its obligation to compensate the "Bug River claimants" and to incorporate into domestic law obligations it had taken upon itself by virtue of international treaties concluded in 1944. However, the Polish authorities, by imposing successive limitations on the exercise of the applicant's right to compensation, and by resorting to practices which made it unenforceable in concrete terms, rendered that right illusory and destroyed its very essence.

Moreover, the right was extinguished by legislation of December 2003 under which claimants in the applicant's position who had been awarded partial compensation (2% of the value of the property, in the applicant's case) lost their entitlement to additional compensation, whereas those who had never received any compensation were awarded an amount representing 15% of their entitlement. This obviously raised an issue of

discrimination.

In the light of these considerations, the European Court concluded that the applicant had had to bear a disproportionate and excessive burden which could not be justified in terms of the legitimate general community interest pursued by the authorities.

The Court was informed that there were roughly 80,000 potential applicants with analogous claims. It concluded in the operative provisions of the judgment that:

• the violation found had originated in a systemic problem connected with the malfunctioning of domestic legislation and practice caused by the failure to set up an effective mechanism to implement the "right to credit" of Bug River claimants;

• the respondent State must, through appropriate legal measures and administrative practices, secure the implementation of the property right in question in respect of the remaining Bug River claimants or provide them with equivalent redress in lieu, in accordance with the principles of protection of property rights under Article 1 of Protocol No. 1.

The Court reiterated that the violation of Article 1 of Protocol No. 1 had originated in a widespread problem which resulted from deficiencies in the domestic legal order which affected a large number of people and ***195** which might give rise in future to numerous, subsequent well-founded applications. It decided to indicate the measures that the Polish State should take, under the supervision of the Committee of Ministers and in accordance with the subsidiarity character of the Convention, so as to avoid a large number of additional cases being referred to it. It also decided that all similar applications -- including future applications -- should be adjourned pending the outcome of the leading case and the adoption of measures at the national level.

This is the first time that the Court has ruled in the operative provisions of a judgment on the general measures that a respondent State should take to remedy a systemic defect at the origin of the violation found.

5. OUTLOOK

I would like to conclude by looking more specifically at the future agenda of our Court. Should we continually expand the reach of our case law? Some would flatly say yes. There are always some individuals, academics, non-governmental organisations or other groups who would like us to embrace their political, economic, social or other agenda and do a lot more. In short, they believe in the old American advertising slogan that "more is better."

I would respond in five ways. Firstly, our Court has an evolutive case law. [FN28] It has branched out in various ways. And it continues to do so. But it does so step by step, in a prudent, gradual way. Courts should not embrace political agendas lock, stock and barrel. It is for the people and parliaments to make political choices.

Secondly, it would not help us much to say that "more human rights are better". We have recently had before a Chamber the case of Princess Caroline of Monaco. [FN29] She wanted the Court to say that, even if she was a public figure, she still had rights of privacy. Well if our Court gave the press more rights, it would give the Princess less rights. If the Court gave the Princess more rights, it would give the press less rights. We constantly balance various public and private interests against each ***196** other. In many respects, it does not help much to claim that "more is better". We would have to ask "more of what"?

Thirdly, we are a Court for 45 vastly different States. More than to try to cater to special interest groups or

persons in specific countries, we should think of the whole Europe-wide context. And this context is one of subsidiarity, in which national courts have a very important role to play.

Fourthly, I will not dwell long on our workload problem. The figures that I submitted to you demonstrate that there is indeed such a problem. So, to put it succinctly, our Court cannot do everything. There is definitely a limit to new tasks that should be assigned to the Court as long as the system is not changed more radically.

Fifthly, what matters, in my view, perhaps even more than newly formulated and invented rights is to turn the existing rights into reality. The law-in-the-books (or "the-law-in-the-Convention") and the law-in-action should become the same in reality. To work on this endeavour is a rewarding task. It is a privilege (although it is also a huge responsibility) to be sitting on our Court at this moment in time and to reflect on what our European future should be. "My Europe" is not one of outdated hegemonies and quarrels of the past. "My Europe" is a continent of legitimate and inspiring diversity, of 41 languages in which complaints can be brought to our Court, of wonderful cultural riches, of constant new challenges and discoveries. It is also a continent of human rights.

[FNa1]. Dr. iur., LL.M., J.S.D., Dres.h.c., LL.D.h.c., Professor at the University of Basel. Text of a conference given at the University of Ottawa on 5 April 2005.

[FN1]. Luzius Wildhaber, "Sovereignty and International Law", in R. St. J. Macdonald & D.M. Johnston, eds., The Structure and Process of International Law: Essays in Legal Philosophy, Doctrine and Theory (The Hague/Boston/Lancaster: Kluwer Law International, 1983) 425-452.

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[FN4]. Golder v. United Kingdom (1975), 1 E.H.R.R. 526 (**European Human** Rights Comm.), 21.2.1975, A/18, § 35.

[FN5]. Hornsby v. Greece (1997), 24 E.H.R.R. 250 (**European Ct. Human Rights**), 19.3.1997, § 40.

[FN6]. Russia 14%, Poland 14%, Turkey 12%, Romania 12%.

[FN7]. Malhous v. Czech Republic (dec.), 13.12.2000, ECHR 2000-XII; Gratzinger v. Czech Republic (Admissibility) (2002), 35 E.H.R.R. CD 202 (**European Ct. Human Rights**), 10.7.2002, ECHR 2002-VII; Kopecky v. Slovakia (2005), 41 E.H.R.R. 43 (**European Ct. Human Rights**), 28.9.2004.

[FN8]. Buscarini v. San Marino (2000), 30 E.H.R.R. 208 (**European Ct. Human Rights**), 18.2.1999, ECHR 1999-I [Buscarini].

[FN9]. Selmouni v. France (2000), 29 E.H.R.R. 403 (**European Ct. Human Rights**), 28.7.1999, ECHR 1999-V [Selmouni].

[FN10]. VgT Verein gegen Tierfabriken v. Switzerland (2002), 34 E.H.R.R. 4 (**European Ct. Human Rights**), 28.6.2001, ECHR 2001-VI [VgT Verein gegen Tierfabriken].

[FN11]. Assanidze v. Georgia (2004), 39 E.H.R.R. 32 (**European Ct. Human Rights**), 8.4.2004.

[FN12]. Luzius Wildhaber, "A constitutional future for the **European Court** of **Human Rights**?" (2002) 23 H.R.L.J. 161-165.

[FN13]. Al-Adsani v. United Kingdom (2002), 34 E.H.R.R. 11 (**European Ct. Human Rights**), 21.11.2001, ECHR 2001-XI, § 55 (italics added).

[FN14]. Ibid.

[FN15]. Loizidou v. Turkey (Preliminary Objections) (1995), 20 E.H.R.R. 99 (**European Ct. Human Rights**), 23.3.1995, A/310, §§ 75, 93 [Loizidou]; Bankovic v. Belgium (Admissibility) (2001), 11 B.H.R.C. 435 (**European Ct. Human Rights**), 2.12.2001, ECHR 2001-XII, § 80.

[FN16]. Ireland (Republic) v. United Kingdom, [1978] 2 E.H.R.R. 25 (**European Ct. Human Rights**), 18.1.1978, A/25, § 239; Loizidou, supra note 15 § 70.

[FN17]. Supra note 13 § 55.

[FN18]. Ibid.

[FN19]. Loizidou, supra note 15 § 72.

[FN20]. Turkish Communist Party v. Turkey, 30.1.1998, § 45.

[FN21]. Jutta Limbach, Die Demokratie und ihre Bürger (München: Beck C.H., 2003), p. 146.

[FN22]. Refah Partisi (Welfare Party) v. Turkey (2003), 37 E.H.R.R. 1 (**European Ct. Human Rights**) 13.2.2003, ECHR 2003-II.

[FN23]. Ibid. § 123.

[FN24]. Ilascu, Ivantoc, Lesco and Petrov-Popa v. Moldova and Russia, 8.7.2004 [Ilascu].

[FN25]. Ibid. § 490.

[FN26]. Press Release 1569 of 8.7.2004.

[FN27]. Broniowski v. Poland (2005), 40 E.H.R.R. 21 (European Ct. Human Rights), 22.6.2004.

[FN28]. Cf. Jean-Paul Costa, << la Cour européenne des Droits de l'Homme: un juge qui gouverne? >>, in Etudes en l'honneur de Gérard Timsit (Bruxelles: Emile Bruylant, 2004), pp. 67-88.

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