EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

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Grand Chamber Panel's decisions

At its last meeting (Monday 18 September 2017), the Grand Chamber panel of five judges decided to refer six cases and to reject requests to refer 23 other cases[1].

The following cases have been referred to the Grand Chamber of the European Court of Human Rights:

Güzelyurtlu and Others v. Cyprus and Turkey (application no. 36925/07): concerning the killing of three relatives of the applicants, who were shot dead in the Cypriot-Government controlled area of Cyprus on 15 January 2005;

Ilias and Ahmed v. Hungary (no. 47287/15): concerning the border-zone detention for 23 days of two Bangladeshi asylum-seekers as well as their removal from Hungary to Serbia;

Fernandes de Oliveira v. Portugal (no. 78103/14): concerning the complaint that the applicant's son, who suffered from mental disorders, committed suicide as a result of a psychiatric hospital's negligence in supervising him;

Murtazaliyeva v. Russia (no. 36658/05): concerning the applicant's complaint about the overall unfairness of criminal proceedings brought against her for preparing a terrorist attack;

Z.A. and Others v. Russia (nos. 61411/15, 61420/15, 61427/15 and 3028/16): concerning complaints brought by four individuals from Iraq, the Palestinian territories, Somalia and Syria who were travelling via Moscow's Sheremetyevo Airport and were denied entry into Russia (three of the applicants ended up spending between five and eight months in the transit zone of the airport; one of the applicants, from Somalia, spent nearly two years in the zone);

Lekić v. Slovenia (no. 36480/07): concerning the striking off of a company that the applicant had a share in, and his subsequent liability for the company's debts.

Referrals accepted

Güzelyurtlu and Others v. Cyprus and Turkey (application no. 36925/07)

The applicants are Cypriot nationals of Turkish Cypriot origin who live in the "Turkish Republic of Northern Cyprus" ("TRNC") or in the United Kingdom.

The applicants are all relatives of Elmas, Zerrin, and Eylül Güzelyurtlu, who were shot dead on the Nicosia-Larnaca highway in the Cypriot-Government-controlled areas on 15 January 2005. Elmas was found dead in a ditch and his wife, Zerrin, and daughter, Eylül, in the back seat of their car parked on the hard shoulder. The three victims were all Cypriot nationals of Turkish Cypriot origin. The killers fled back to the "TRNC".

Parallel investigations into the murders were conducted by the authorities of the Cypriot Government and the Turkish Government, including those of the "TRNC".

[1] Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

The Cypriot authorities, among other things, collected and secured evidence at the scene of the crime and at the victims' house, conducted post-mortem examinations, took statements from numerous witnesses (including the victims' relatives), carried out a ballistic examination and DNA tests, searched the records of vehicles that had gone through the crossing points, and examined the security system of the victims' house and computer hard discs. The investigative steps quickly led the authorities to conclude that the victims had been kidnapped and murdered in the early hours of 15 January 2005 and then to identify eight suspects. In the days after the shootings, domestic and European arrest warrants were thus issued and the Cypriot police submitted requests to Interpol to search for and arrest the suspects with a view to their extradition. Red notices were published by Interpol in respect of all suspects. The suspects were also all added to the Cypriot Government's "stop list" (a register of individuals whose entry into and exit from Cyprus is monitored or banned). On 24 April 2008 the case file was classified as "otherwise disposed of" pending future developments.

The Turkish (including the "TRNC") authorities equally took a number of investigative steps following the news of the murders, and by the end of January 2005 all of the suspects had been arrested. Statements were taken from the suspects – who denied any involvement in the crime – and persons who knew or were connected to them as well as from the applicants. Evidence was also collected. However, the suspects were released on or around 11 February 2005 due to lack of evidence connecting them to the murders. The file was classified as "non-resolved for the time being" in March 2007.

The "TRNC" authorities insisted that the case file containing the evidence against the suspects be handed over so that they could conduct a prosecution. The Cypriot authorities refused. On the strength of the evidence gathered during their investigation, the Cypriot authorities – in November 2008 – sought the extradition of the suspects who were within Turkey's jurisdiction (either in the "TRNC" or in mainland Turkey) with a view to their trial. The extradition requests were returned to the Cypriot authorities without reply. The investigations of both respondent States thus reached an impasse and have remained open since then.

Following the murders the Cypriot Government, the "TRNC" and the applicants were in contact with the United Nations Peacekeeping Force in Cyprus ("UNFICYP") about the case. A number of meetings were held and there was also an exchange of telephone calls and correspondence. However, UNFICYP's efforts to assist the sides to bring the suspects to justice have proved unsuccessful.

Relying on Article 2 (right to life) of the European Convention on Human Rights, the applicants complain that both the Cypriot and Turkish authorities (including those of the "TRNC") failed to conduct an effective investigation into the killing of their relatives. They further allege that as a result of the refusal of Turkey and Cyprus to co-operate the killers have not yet faced justice. Relying on Article 13 (right to an effective remedy) of the Convention in conjunction with Article 2, they complain of a lack of an effective remedy in respect of their Article 2 complaint.

In its Chamber judgment of 4 April 2017, the European Court of Human Rights held, by five votes to two, that there had been a violation of Article 2 (right to life/investigation) of the Convention by Cyprus and, unanimously, that there had been a violation of Article 2 (right to life/investigation) by Turkey. The Chamber found in particular that, where – as in the applicants' case – the investigation of unlawful killings unavoidably implicated more than one State, the States concerned were obliged to cooperate effectively and take all reasonable steps necessary to facilitate and realise an effective investigation into the case overall. However, it was clear from all the material before the Court, that both Governments had not been prepared to make any compromise on their positions and find middle ground, despite various options having been put forward, including by the United Nations. That position arose from political considerations which reflected the long-standing and intense political dispute between Cyprus and Turkey. A situation thus resulted in which the respondent Governments' respective investigations – which the Chamber found adequate up until the impasse –

remain open. Nothing has therefore been done for more than eight years to bring to a close what is ultimately a straightforward case. Given that conclusion, the Court was of the opinion that there was no need to examine separately the applicants' complaint under Article 13 of the Convention taken in conjunction with Article 2.

On 18 September 2017 the Grand Chamber Panel accepted the requests of the Governments of Cyprus and Turkey that the case be referred to the Grand Chamber.

Ilias and Ahmed v. Hungary (no. 47287/15)

The applicants, Md Ilias Ilias and Ali Ahmed, are Bangladeshi nationals who were born in 1983 and 1980.

Having left Bangladesh, the applicants transited through Greece, "the former Yugoslav Republic of Macedonia" and Serbia, eventually arriving in Hungary on 15 September 2015. They immediately applied for asylum. For the next 23 days they stayed inside the Röszke transit zone situated on the border between Hungary and Serbia; they could not leave in the direction of Hungary as the zone was surrounded by a fence and guarded.

Following two sets of asylum proceedings, they were removed from Hungary essentially on the strength of a Government Decree, introduced in 2015, listing Serbia – the last country through which the applicants had transited – as a safe third country. The asylum authorities notably found that psychiatrist reports, following their visits with the applicants, had not shown that the applicants had special needs which could not be met in the transit zone. Nor had the applicants referred to any pressing individual circumstances to substantiate their assertion that Serbia was not a safe country for them. The domestic court upheld this decision which was served on the applicants on 8 October 2015. They were immediately escorted to the Serbian border, leaving the transit zone without physical coercion being applied.

Relying on Article 5 § 1 (right to liberty and security) and Article 5 § 4 (right to have lawfulness of detention decided speedily by a court) of the European Convention on Human Rights, the applicants allege that the 23 days they had spent in the transit zone amounted to a deprivation of liberty which had no legal basis and which could not be remedied by appropriate judicial review. Further relying on Article 3 (prohibition of inhuman or degrading treatment) and Article 13 (right to an effective remedy) of the Convention, they allege that their protracted confinement in the transit zone in substandard conditions, especially given that they had been suffering from posttraumatic stress disorder, had been inhuman. Further relying on Article 3, they allege that their expulsion to Serbia, without a thorough and individualised assessment of their cases, had exposed them to possible chain-*refoulement* – via Serbia and "the former Yugoslav Republic of Macedonia" – to Greece, where they had been at risk of inhuman reception conditions. They further claim that the inadequacy of the asylum proceedings had been aggravated by the fact that the only legal information the authorities had given the applicants, who were illiterate, had been written, and that one of them had been interviewed in a language he did not speak.

In its Chamber judgment of 14 March 2017, the European Court of Human Rights held, unanimously, that there had been a violation of Article 5 §§ 1 and 4 (right to liberty and security) of the European Convention on Human Rights, finding that the applicants' confinement in the Röszke border-zone had amounted to detention, meaning they had effectively been deprived of their liberty without any formal, reasoned decision and without appropriate judicial review. The Chamber further held, unanimously, that there had been no violation of Article 3 (prohibition of inhuman or degrading treatment) of the Convention as concerned the conditions of the applicants' detention in the transit zone, but a violation of Article 13 (right to an effective remedy) as concerned the lack of an effective remedy with which they could have complained about their conditions of detention. Lastly, the Chamber held, unanimously, that there had been a violation of Article 3 on account of the

applicants' expulsion to Serbia insofar as they had not had the benefit of effective guarantees to protect them from exposure to a real risk of being subjected to inhuman or degrading treatment.

The Chamber found in particular that, in the applicants' asylum proceedings, the Hungarian authorities had: failed to carry out an individual assessment of each applicant's case; schematically referred to the Government's list of safe third countries; disregarded the country reports and other evidence submitted by the applicants; and imposed an unfair and excessive burden on them to prove that they were at real risk of a chain-refoulement situation, whereby they could eventually be driven to Greece to face inhuman and degrading reception conditions.

On 18 September 2017 the Grand Chamber Panel accepted the Hungarian Government's request that the case be referred to the Grand Chamber.

Fernandes de Oliveira v. Portugal (no. 78103/14)

The applicant, Maria da Glória Fernandes de Oliveira, is a Portuguese national who was born in 1937 and lives in Ceira (Portugal).

Ms Fernandes de Oliveira's son suffered from mental disorders, and was repeatedly admitted to Sobral Cid Psychiatric Hospital in Coimbra. In April 2000 he was admitted to the same institution, because he had attempted to commit suicide. On 27 April 2000 he left the premises without notifying the hospital authorities, and committed suicide by jumping in front of a train. Ms Fernandes de Oliveira lodged a civil action for damages against the hospital, claiming that her son should have been under medical supervision and that the hospital staff should have prevented him from leaving the premises. Her claim was dismissed by the Coimbra Administrative Court, as was her appeal to the Administrative Supreme Court, on the grounds that the suicide had not been foreseeable and the hospital had not breached any duty of care.

Relying in particular on Article 2 (right to life) of the European Convention on Human Rights, Ms Fernandes de Oliveira complains that the authorities failed to protect the life of her son and were responsible for his death. She also complains about the length of the proceedings she brought against the hospital before the domestic courts.

In its Chamber judgment of 28 March 2017, the European Court of Human Rights held, unanimously, that there had been a violation of Article 2 (right to life/investigation) of the Convention. The Chamber noted in particular that on 27 April 2000 Ms Fernandes de Oliveira's son had last been seen some time after 4 p.m. but his absence was not observed until around 7 p.m. when he did not show up for dinner. By then he was already dead. The emergency procedure had thus been ineffective in preventing his escape and, ultimately, his suicide. The risk had been exacerbated by the open and unrestricted access from the hospital grounds to the railway platform. In the light of the positive obligation to take preventive measures to protect an individual whose life is at risk and faced with a mentally ill-patient who had recently attempted to commit suicide and was prone to escaping, the Chamber found that the hospital staff should have been expected to adopt safeguards to ensure that he would not leave the premises and to monitor him on a more regular basis. The Chamber also concluded that the domestic legal mechanisms, seen as a whole, had not secured in practice an effective and prompt response on the part of the Portuguese authorities' consonant with the State's procedural obligations, noting in particular that the proceedings had lasted in excess of eleven years for two levels of jurisdiction.

On 18 September 2017 the Grand Chamber Panel accepted the Portuguese Government's request that the case be referred to the Grand Chamber.

Murtazaliyeva v. Russia (no. 36658/05)

The applicant, Zara Murtazaliyeva, who was born in 1983 and lives in Paris (France). She is a Russian national and an ethnic Chechen.

In 2004 the flat Ms Murtazaliyeva shared with two other women was put under secret police surveillance because she was suspected of having connections with the Chechen insurgency movement. She was subsequently stopped in the street by the police for an identity check and taken to a police station. Her bag was searched; two packages were found in it which were later examined and found to contain explosives. She was arrested and a criminal investigation opened. Her flat was searched and evidence was seized indicating that she had been planning a terrorist attack on a shopping centre. A transcript of the video tapes recorded at the flat showed her proselytising Islam to her two flatmates and discussing her hatred for Russians.

In January 2005 Ms Murtazaliyeva was convicted of preparing an explosion, inciting others – her two flatmates – to commit terrorism and carrying explosives. She was sentenced to nine years' imprisonment. The conviction was based on forensic examination reports, transcripts of the police surveillance videotapes recorded at her flat and statements made by her flatmates in open court. She appealed the conviction. She alleged, among other things, that due to technical reasons she had not been able to point out inaccuracies between the transcripts and the recordings of conversations on the videotapes. She also complained about the refusal of two of her requests to summon witnesses: the first, to examine a police officer and acquaintance of hers who had made a pre-trial statement confirming that he had established a relationship with her at the order of his superiors; and the second, to examine two attesting witnesses who had been present during the search of her bag at the police station. In March 2005, the Supreme Court upheld her conviction, but reduced the sentence to eight and a half years. It notably held that no objections had been lodged with the trial court about the quality of the videotapes or the manner in which they had been shown; that the police officer could not testify in court because he was on a work-related mission but that his pre-trial statement had been read out in court with the consent of the defence; and, that the two attesting witnesses' presence had not been necessary since Ms Murtazaliyeva claimed that the explosives had been planted in her bag before their arrival.

Ms Murtazaliyeva alleges that the overall fairness of the criminal proceedings against her had been undermined because she had not been able to see or effectively examine the surveillance videotapes shown during the hearing on her case as she could not see the video screen in the courtroom; and because she had not been allowed to question in court the police officer whose actions, in her opinion, could be considered as police incitement or the two attesting witnesses, who could have clarified her allegations concerning the planting of the explosives in her bag. She relies on Article 6 §§ 1 and 3 (b) and (d) (right to a fair trial / right to adequate time and facilities for preparation of defence / right to obtain attendance and examination of witnesses) of the European Convention on Human Rights.

In its Chamber judgment of 9 May 2017, the European Court of Human Rights held, unanimously, that there had been no violation of Article 6 §§ 1 and 3 (b) of the Convention, finding that Ms Murtazaliyeva had not been placed at a serious disadvantage *vis-à-vis* the prosecution in respect of the viewing and examination of the surveillance videotapes. The Chamber further held, by four votes to three, that the refusal of the domestic court to call witness for the defence did not affect the overall fairness of the trial and that there had therefore been no violation of Article 6 §§ 1 and 3 (d) of the Convention in this respect. The Chamber lastly held, by five votes to two, that there had been no violation of Article 6 §§ 1 and 3 (d) of the Convention as regards the complaint concerning the absence of two attesting witnesses from the applicant's trial.

On 18 September 2017 the Grand Chamber Panel accepted Ms Murtazaliyeva's request that the case be referred to the Grand Chamber.

Z.A. and Others v. Russia (nos. 61411/15, 61420/15, 61427/15 and 3028/16)

The applicants in this case are four individuals holding identity documents from Iraq, the Palestinian territories, Somalia and Syria.

While travelling, independently from each other, via Moscow's Sheremetyevo Airport, the applicants were denied entry into Russia by the Russian border authority due to irregularities with their travel documents. As a result, three of the applicants ended up spending between five and eight months in 2015/2016 in the transit zone of the airport; one of the applicants, from Somalia, was in the zone for one year and eleven months between 9 April 2015 and 9 March 2017.

All four applicants applied for refugee status in Russia, without success. The Iraqi applicant and the Syrian applicant were eventually resettled by the office of the United Nations High Commissioner for Refugees (the "UNHCR"), in Denmark and Sweden respectively. The applicant from the Palestinian territories was able to leave the transit zone when the opportunity to take a flight to Egypt presented itself. The applicant from Somalia left for Mogadishu having lost hope of obtaining refugee status in Russia.

Relying on Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights, the applicants complain about the poor conditions of their detention in the transit zone where they had to sleep on a mattress in the constantly-lit and noisy boarding area of the airport, with no possibility to shower, and live on emergency rations provided by the UNHCR. They also allege that their confinement to the transit zone amounted to an unlawful deprivation of their liberty, in breach of Article 5 § 1 (right to liberty and security) of the Convention.

In its Chamber judgment of 28 March 2017, the European Court of Human Rights held, by six votes to one, that there had been a violation of Article 5 § 1 (right to liberty and security) of the Convention, finding that the applicants' confinement in the transit zone, which had not been of their own choosing, had amounted to a deprivation of liberty and that there had been no legal basis for it under domestic law. The Chamber also held, by six votes to one, that there had been a violation of Article 3 (prohibition of inhuman or degrading treatment) of the Convention, finding that the applicants had been detained for extended periods of time in unacceptable conditions, which had undermined their dignity, made them feel humiliated and debased, and therefore amounted to inhuman and degrading treatment.

On 18 September 2017 the Grand Chamber Panel accepted the Russian Government's request that the case be referred to the Grand Chamber.

Lekić v. Slovenia (no. 36480/07)

The applicant, Ljubomir Lekić, is a Slovenian national who was born in 1956 and lives in Ljubljana.

During the 1990s, Mr Lekić was a member, employee and eventually managing director of the company L.E.. Following the death or serious injury of four key members and managers in 1993, the company experienced serious financial difficulties. It faced a civil claim for 5,000,000 Slovenian tolars (approximately 20,000 euros) from the Railway Company of Slovenia, on account of unpaid transport services. However, by 1995 the company was no longer liquid or solvent. It eventually became inactive.

In 1997 the remaining members of the company decided to apply for bankruptcy. However, the company's bankruptcy petition was rejected by the court, because there had been no advance payment of the costs and expenses. The members decided that they could not incur these costs, choosing instead to wait for the courts to liquidate the company on its own motion, which was possible under the law at the time.

In 2000, the Railway Company obtained a judgment in its favour, which ordered L.E. to pay it the outstanding sum.

Slovenian company legislation was changed in 1999. The power of the courts to wind up and liquidate companies on their own motion was repealed, and instead the courts were granted the power to strike off companies from the court register without them being wound up. Under this procedure, companies could be dissolved without their assets being collected and used to pay

creditors. Furthermore, the members of struck-off companies would assume joint and several liability for the companies' debts.

In 2001, this new procedure was used to strike off L.E. from the court's register. L.E. had ceased to operate at its registered address (or any other premises), so no service on the company could occur. According to Mr Lekić, he had no knowledge of the strike off.

After the strike-off, the Railway Company applied for an enforcement order against the seven members of L.E., in relation to the judgment debt of approximately 20,000 euros with statutory interest. It was granted an order to seize Mr Lekić's personal possessions, which was served on him in December 2004. Mr Lekić resisted the order in court, by lodging an objection to it and applying for a stay of enforcement. He argued that he had not been an active member of L.E. at the relevant time, which would have exonerated him from paying the company's debt. The Ljubljana Local Court rejected the claim that he had been inactive, finding that the burden was on Mr Lekić to prove that he had not been an active member, and that he had failed to do so. It upheld the enforcement order and refused to grant a stay of enforcement.

Mr Lekić lodged an appeal, but this was dismissed by the Higher Court of Ljubljana. The court held that the measure of 'lifting the corporate veil' in such a case was consistent with the Constitution. Mr Lekić lodged two further cassation appeals, but these were both rejected. The final decision was made in July 2007.

In 2010 the enforcement order against Mr Lekić's salary was executed, and a part of his monthly salary payments were seized to pay off the debt. The following year, Mr Lekić reached a settlement with the Railway Company, and paid the agreed amount. In total, he paid 32,795 euros to his creditor.

Relying in particular on Article 1 of Protocol No. 1 (protection of property) to the European Convention on Human Rights, Mr Lekić complains, *inter alia*, that the striking-off of the company and his ensuing liability interfered with his property rights and amounted to an unlawful deprivation of property. He argues that the lifting of the corporate veil under the strike-off procedure had violated the principle of legal certainty, that it had lacked any legitimate aim, and that it had not been justified.

In its Chamber judgment of 14 February 2017, the European Court of Human Rights held, unanimously, that there had been no violation of Article 1 of Protocol No. 1, finding that the national courts' finding that Mr Lekić was an active member of the company and thus liable for the payment of its debts was reasonable. The Chamber found in particular that the measure striking off the company from the register had not represented an excessive individual burden for the applicant. Furthermore, the company's disregard for company law and the principles of good corporate governance, which consisted of inadequate capitalisation, failure to observe the law and good business practices, a prolonged state of insolvency, and inactivity on the part of the company's management, had warranted a strong response by the authorities, including the imposition of personal liability on any member who was found to be responsible for the irregularities in the operation of the company. Lastly, the irregularities were to a large extent attributable to Mr Lekić himself, as he had been employed by the company for more than four years and was involved in its management, first as its acting director and later as managing director.

On 18 September 2017 the Grand Chamber Panel accepted Mr Lekić's request that the case be referred to the Grand Chamber.

Requests for referral rejected

Judgments in the following 23 cases are now final[2].

Requests for referral submitted by the applicants

Thimothawes v. Belgium (application no. 39061/11), judgment of 4 April 2017

Van Wesenbeeck v. Belgium (nos. 67496/10 and 52936/12), judgment of 23 May 2017

Borojević and Others v. Croatia (no. 70273/11), judgment of 4 April 2017

Thuo v. Cyprus (no. 3869/07), judgment of 4 April 2017

Kavaliauskas and Others v. Lithuania (no. 51752/10), judgment of 14 March 2017

Podeschi v. San Marino (no. 66357/14), judgment of 13 April 2017

Sarur v. Turkey (no. 55949/11), judgment of 2 May 2017

Moroz v. Ukraine (no. 5187/07), judgment of 2 March 2017

Requests for referral submitted by the Government

K.B. and Others v. Croatia (no. 36216/13), judgment of 14 March 2017

Marunić v. Croatia (no. 51706/11), judgment of 28 March 2017

Žáková v. the Czech Republic (no. 2000/09), judgment (just satisfaction) of 6 April 2017

Modestou v. Greece (no. 51693/13), judgment of 16 March 2017

Talpis v. Italy (no. 41237/14), judgment of 2 March 2017

Kargashin and Others v. Russia (nos. 66757/14, 73424/14, 5138/15, 5678/15, 8055/15, 9234/15 and 11460/15), judgment of 21 March 2017

Mozharov and Others v. Russia (nos. 16401/12, 67528/14, 74106/14, 77730/14, 77733/14, 77916/14, 6141/15, 8376/15, 9166/15 and 12321/15), judgment of 21 March 2017

Mukayev v. Russia (no. 22495/08), judgment of 14 March 2017

OOO Izdatelskiy Tsentr Kvartirnyy Ryad v. Russia (no. 39748/05), judgment of 25 April 2017

Orlov and Others v. Russia (no. 5632/10), judgment of 14 March 2017

Strekalev v. Russia (no. 21363/09), judgment of 11 April 2017

Tagayeva and Others v. Russia (nos. 26562/07, 14755/08, 49339/08, 49380/08, 51313/08, 21294/11 and 37096/11), judgment of 13 April 2017

V.K. v. Russia (no. 9139/08), judgment of 4 April 2017

Volchkova and Mironov v. Russia (nos. 45668/05 and 2292/06), judgment of 28 March 2017

Yevgeniy Zakharov v. Russia (no. 66610/10), judgment of 14 March 2017

[2] Under Article 44 § 2 (c) of the European Convention on Human Rights, the judgment of a Chamber becomes final when the panel of the Grand Chamber rejects the request to refer under Article 43.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.