Law in Transition.
Reform of Post Socialist Legal Systems in Central and Eastern Europe and Comparative Law[1]

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1. Introduction: Aims and main problems

Comparative law under conditions of increasing international and supranational cooperation forms a basic part of jurisprudence. Scientific research is based on comparative questioning. As legal sources, legislation and jurisdiction are primarily bound to national law, the comparative approach is of specific importance in national as well as international jurisprudence to find out and to develop general principles for the adequate solution of conflicts of interests.[2]

Comparative law in general aims at and is based on:
(1) Knowledge of foreign national and international (or supranational) legal sources and jurisdiction (*Auslandsrechtskunde*),
(2) Contrastive comparison by describing evident differences between legal orders and constitutional systems (*kontrastierende Vergleichung*),
(3) Historical comparison by inquiring into the development as well as looking for alternatives of laws that are at present valid (*historische Vergleichung*),
(4) Systematic comparison by making clear the systematic context of a special rule or legislative act (*systematische Vergleichung*),
(5) Functional comparison by elaborating the political and social or economical context of a certain conflict and its similar or different solutions by different lawmakers under different national conditions (*funktionale Vergleichung*),
(6) Legal political comparison by critical analysis of bills and by making proposals for reform projects and drafts (*rechtspolitische Vergleichung*).

These comparative steps and methods are normally used in a variety of combinations. Nevertheless, it is necessary to reflect their differences while making use of them. Concerning the legal development in Central, Eastern and South Eastern Europe and the relation between Eastern and Western Europe, it turns out that historical (3) and functional (5) comparative approach need interdisciplinary cooperation of lawyers and other faculties (which is sometimes easier said than done).

After the break down of the former socialist systems of governance in Eastern Europe and their beginning transformation and partial integration into the enlarged European Union, the comparative approach and comparative methods became more and more relevant.[3]

2. Comparative law and lawmaking

Comparative law has become a constituent part of the law-making process and even of the decision-making process in jurisdiction in national, international, and especially in European Law, i.e. the law of the European Union, as well as the jurisdiction of the European Court (of the European Union in Luxembourg) and of the European Court of Human Rights (of the Council of Europe in Strasbourg).

In international law comparative study of the different leading national legal systems is a necessary precondition for decision-making. Art. 38 lit. b), c) d) Statute of the International Court of the UN as well as the Statute of the International Criminal Tribunal for the Former Yugoslavia (ICTY, Art. 10 para. 3, Art. 24 para. 1) and the Rules of Procedure and Evidence (Rules 5, 7 and 89) refer either to national rules or to general rules of customary law which can be defined only on the ground of comparative studies.

General principles of law in the written and unwritten law of the European Union, part of which is the jurisdiction of both European courts (Lecheler 2003), can also be based solely on previous comparative research in national and European law. The general principle of priority of the Law of the European Union in relation to the law of its member states also needs comparative argumentation for its final legitimation (Lecheler 2002: 52 passim).[4]

The jurisdiction of both of the European courts, mentioned above, refers in many decisions to arguments found by comparative research ("General principles" of law, basic principles of constitutional law of the member states). On the other, hand national courts (like the Federal Constitutional Court of Germany and the Federal Court of Germany) refer expressis verbis increasingly to European law and comparative law and oblige their subordinated courts either to apply directly the European and International Law or to make use of comparative law in the process of decision making.[5]

3. The double transformation of Eastern and South Eastern Europe and the role of EU enlargement

Concerning the legal development of the former socialist states of Eastern and South Eastern Europe and their present status either as new members (Estonia, Latvia, Lithuania, Czech Republic, Hungary, Poland, Slovakia, and Slovenia) or as candidates (Bulgaria, Romania, and Croatia) of the EU, comparative law is of actual relevance to analyse the special problems of these countries in transition.

- As long as these states formed the so called socialist or communist "Eastern European Bloc" methods of comparative law could be used as instruments for critical analysis of functioning or non-functioning of the socialist legal system.
- Currently, relative methods are needed for evaluating the advance of legal reforms in each of the post-socialist states adopting the *aquis communautaire* of

European law.

All countries in transition are dealing with special and more or less similar problems (Bunce 2000; Bönker, Müller, Pickel 2002; Hopfmann, Wolf 1998; Hopfmann 2001; Merkel 1999; Merkel, Sandschneider, Segert 1996; O'Donnell 2001; Rose, Mishler, Haerpfer 2000; Boulanger 2002). As former candidates or as new members of the European Union these countries were objects and at the same time subjects of a double transformation:

- Democratisation, privatisation, legislation, and jurisdiction concerning former function holders, judges, military persons etc. who under unlawful systems violated basic human rights of their citizens.
- Adaptation of their complete legal system to the law of the EU.[6]

Both transformations are partially but not totally identical. The "pressure of reform" was and is much higher for those states that join the EU. During the negotiations of the pre-accession phase the entire political, economical, social, and legal system is divided into 31 chapters,[7] screened and evaluated under normative, institutional aspects and criteria of capacity and functioning in practice.

This procedure can be characterised, as far as law is concerned, as the most intensive form of comparative law in practice, the result of which led to the most important law-making activities in Central and Eastern Europe in the course of the present and the last century. The fact that the new members and the candidates for membership have been involved for years in this procedure and still are, may explain the significant difference of the achieved status regarding post-socialist states without any concrete perspective for accession to the EU like, for instance, Ukraine and Serbia on the one hand, in comparison with Poland and Croatia on the other hand. Of course, historical and other factors play an additional role to produce these significant differences in the actual status of these countries. But the main reason is obviously whether there is or will be a concrete chance for accession in the nearer future or not.

At the Zagreb Summit of November 24, 2000, it was decided to complete the previous concept of the Association Agreements, as practiced with the ten candidate states of the first enlargement round, step by step by pre-connected cooperation conventions with the last five candidates and by a special relief program.[8] That way the summit has opened the third round of (Southeast) enlargement of the EU. The first states for which the formal admission into this new status of associated and candidate countries has been performed are Macedonia (March 26, 2001) and Croatia (July 9, 2001).[9] On June 18, 2004, Croatia was awarded by the European Council the candidate status for EU membership. The first annual report of the EU Commission on the Stabilisation and Association Process in South-Eastern Europe was published on April 4, 2002. It was followed by separate country reports.[10] Since October 3, 2005, accession negotiations between the EU and Croatia aiming at full EU-membership of Croatia are formally opened.

Eastern and South Eastern European states and their legal systems are obliged to adapt their legislation and the entire legal system to the law of the EU. Primary treaty law and secondary law, i.e. basic principles, decrees, guidelines, and recommendations of the law-making bodies of the EU as well as the jurisdiction of its courts are binding grounds for legislative activities and court decisions in all new member states as well as of the associated candidates for membership.

Comparative control of legal development is therefore an obligatory instrument in the process of decision-making in all old and new EU member and candidate states.

Differences in legal tradition and legal culture in those post-socialist states of Eastern Europe who are already or will become members of the EU are in so far overruled by new binding principles of EU law. Nevertheless, these differences do still exist at least in heads and customs of function holders, like judges and civil servants, and it would be unrealistic to expect that they can be eliminated just by law-making measures. Overcoming half a century of socialist legal traditions and full integration into the European law under conditions of a democratic state of law and a market economy based on private property needs long term educational and institution building measures.

4. Reaction to unlawful political systems after system change

All states in transition including the united Germany found their special ways to deal with the problems of an unlawful political and legal past (Veen 2003; Brunner 1995). Three main models can be distinguished (Eser, Arnold 2000–2003):

1) The "clean break model" (*Schlussstrichmodell*),
2) The "criminal prosecution model" (*Strafverfolgungsmodell*),
3) The "reconciliation model" (*Versöhnungsmodell*).

The absolute clean break model was followed more or less after the changes in the political system had taken place by Russia, Belarus, Georgia, and also by Spain after the fascist Franco regime. A relative modification of this model was realised in Poland (Szczerbiak 2002), Czech Republic, Bulgaria, and Hungary on the one hand, and in Argentina and Chile on the other hand. The criminal prosecution model was realised first of all and probably overstressed by Germany not after the unconditional surrender that ended World War II, the break down of the Nazi regime and the occupation by Allied troops, but after the break down of the Berlin wall and the political system of the German Democratic Republic (GDR) and the unification of both German states (Homann 2003; Quasten 2003). With much less effort Greece adopted this model after the end of the junta regime, so did Portugal and Rwanda. The reconciliation model was practiced in South Africa under president Mandela ("truth commissions") and in Guatemala (for the specific countries, see the country chapters in Eser, Arnold 2000–2003).

Some states tackled this problem by way of a general amnesty (like Russia), some by a mixed system of "lustration", i.e. partial voluntary information given by the former function holder himself (like Poland),

some did it by systematically prosecuting a great number and sentencing a much smaller number of indicted former function holders (like Germany; see Brunner 1995; Roggemann 1993; Buchner 1996); others prosecuted only limited groups of persons (and only because they had violated special laws) and abolished all other proceedings (like Hungary).

Finding the answer to the question "How to react to unlawful political systems and their violation of basic human rights?" leads to the limits of law. The main problem is how and by which criteria can the validity of legal norms that had been issued and practiced under socialist/communist regimes be questioned or even denied from a retrospective point of view without violating basic principles of the constitutional state, e.g., the prohibition of retroactivity?

Three criteria have to be taken into consideration here:

1) Positive national law,
2) International law,
3) Meta-positive law ("Naturrecht"), based on moral, religious, or philosophical values (Roggemann 1994 and 1998a).

The crucial point is: Under which conditions does the legal justification of using weapons to prevent refugees without permission to leave the GDR illegally become non valid and therefore making use of weapons is unlawful?

The Federal Court of Germany in its first decision of 1992 sentencing the so-called "wall shooters" ("*Mauerschützen*") tried to find a way out of this conflict of values and laws by combining several criteria (cf. 2 and 3 above) and creating the following new formula:

> "If the violation is an obviously grave breach of elementary concepts of justice and humanity; the violation has to be so heavy that it hurts the idea of justice common to all nations and based on value and dignity of mankind".[11] In another sentence of 1994 the Federal Court argues: „Because of obvious and intolerable violation of elementary orders of justice and of human rights protected by international law (the regulation of the former GDR) cannot justify the committed act".[12]

Both sentences clearly show the doubtful attempt of the German High Court to prosecute the former soldiers of the GDR by applying penal law of the GDR but not the justifying part of this law. Moreover, both decisions refer at last to comparative law. Terms like the "idea of justice common to all nations" and "elementary orders of justice and of human rights" can be applied only by means of comparative law.

But what penal law has to be applied as a base for conviction? Either the penal law of the former socialist state before the political change (in the case of the GDR, this state did not exist any more) or the penal law of the Federal Republic of Germany – but this would mean a double violation of the principles of the constitutional state. The crime had not been committed on the territory of the FRG and the former GDR-soldier had not been a citizen of the FRG. Also, the penal law of the FRG would be applied by a retroactive decision of another court after the state and the law and courts of the former GDR had disappeared.

To find a way out of this dilemma, the German jurisdiction referred to comparative law once more: both laws were held applicable. The law of the Federal Republic of Germany had to be applied as primary base for penalising because the socialist law of the no longer existing GDR simply could not be applied because of nulla poena sine lege scripta. And the law of the former GDR had to be applied indirectly, too, to make sure that the penalised activity was – at the time when the crime was committed – punishable under this socialist law as well. The conviction of former socialist function holders could therefore be based only on an act of comparative law.

This double construction shows how questionable the "German way" of using the "criminal prosecution model" was. Judges have been aware of these circumstances. All in all, more than 65 000 investigations were initiated because of unlawful acts committed by former function holder in the GDR (judges, soldiers, members of secret service, staff of prisons). But three quarters of the proceedings were dropped, only about one percent of the investigations led to charges, approximately 180 of these because of killings on the border, and 230 because of abuse or perversion of judicial proceedings. Altogether, approximately 400 persons were sentenced, half of them, i.e. about 200, got suspended sentences. Only five percent of the accused – five GDR judges and prosecutors, four soldiers guarding the border, and nine superiors of border soldiers – were sentenced without probation (Roggemann 1997a). In 2000, the criminal prosecution of former function holders of the GDR came to an end.

The European Court of Human Rights in two decisions agreed with the German practice of sentencing former socialist functionaries.[13]

5. International criminal prosecution and transformation

The countries of the former Yugoslavia have to deal (or should deal) with crimes committed by former function holders and soldiers not only during the socialist regime under President Tito and afterwards, but also, and even more so, with crimes commited during the first transitional period from 1991 until 1995. Whereas the change of the political systems and the disintegration of the former socialist federations in other regions of Central and Eastern Europe ruled by socialists/communists proceeded in a peaceful way (e.g. Czechoslovakia) or accompanied by regionally limited armed conflicts (e.g., Latvia, Azerbaijan, Georgia, and Moscow in the Soviet Union) this was not the case in former Yugoslavia.

The Serbian President Milošević tried to prevent the dissolution, inevitable at that time, of the Yugoslav Federation by military aggression against Slovenia, Croatia, and Bosnia-Herzegovina. One third of Croatian and three quarters of Bosnian territory was occupied for years by troops of the former Yugoslav Army (JNA) and by paramilitary and police units equipped also by the Serbian government. War crimes and unbelievable atrocities, mass killings, and ethnic cleansing were committed and led in 1993 to the establishment of the International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991.[14]

This Tribunal (ICTY) was not immediately based on international treaty law but on resolution 827 of the Security Council of the UN, passed on May 25, 1993. Ten years after the establishment of this court and eight years after the Dayton Agreement which ended the war in Croatia and Bosnia, proceedings before this Tribunal are still taking place, the main aggressor Milošević is not yet sentenced and two of the main indicted persons, Karadžić and Mladić, have not even been arrested to be brought to justice.

Cooperation with the ICTY is also a precondition set by the EU and its member states for the ratification of the treaties on cooperation and association between EU and member states-to-be which result in getting the status (and financial help) of candidates for full membership (Maikowski 20002; Meissner 2003). Comparative research of legislation and legal practice in Croatia, Bosnia and Herzegovina, and Serbia and Montenegro is therefore necessary to clarify the actual practice and intensity of cooperation of these states with the ICTY (Roggemann, Kurtović, Novoselec 2004). Comparative international criminal law and procedure have also to be worked out to enable the willing Balkan states, like Croatia and Bosnia-Herzegovina, to take over prosecution and proceedings from the ICTY when the working period of this ad-hoc tribunal will end – probably at the end of this decade. Recently, the ICTY discussed these issues and decided to transfer some cases of prosecution of war crimes to the jurisdiction of Bosnia and Herzegovina. A similar discussion on transmission of certain cases of prosecution to the jurisdiction of Croatia is still ongoing.

6. De-socialisation, privatisation, de-nationalisation

Privatisation of the former state-owned socialist economy is, together with political democratisation and development of a constitutional state, one of the core questions of the transition process in Central and Eastern Europe – and probably also in other regions of the world where there socialist or semi-socialist political and economical systems are still in existence.

The main difference between socialist political and economical systems and capitalist ones can be found in the different conceptions of property and their consequences. Only when the (re-)introduction of private property and the new property order are realised to a large degree, post-socialist reforms seem to become irreversible (Roggemann 1997b and 1999b; Roggemann, Lowitzsch 2002; Nichols 1997; Lowitzsch 2002).

The relation between the public and state-owned or state-ruled sector of economy on the one hand and the private sector based on private property on the other hand its highly controversial and – as recent tendencies in England, France, and elsewhere make evident – probably not to be regulated definitely by law making.

The discussion about the model most adequate for solving this issue is not limited to Eastern Europe but going on as well in France, England, and Spain and recently in Germany. Owing to a traditionally different understanding of market relations and state-dominated economy, the Russian Federation seems to develop a more state-orientated model of post-socialist market economy (Boguslawskij, Knieper 1998; Krüßmann 1998).

A comparative overview leads to the following conclusions:

- The process of privatisation is not yet completely achieved,
- The legal framework for a social market economy is not yet completed,
- A system of juridical guarantees especially including an efficient and independent court system has not yet been fully developed,
- Increasing political and social conflicts have led to a dramatically increased crime rate in the field of economy and especially in the field of privatisation.

To reach the same aims, post-socialist countries created organisational models significantly differing from each other (Roggemann, Lowitzsch 2002):

- Some countries chose a model of organisation on the level of ministries (Poland, Russia, Czech Republic),
- Others established special organs of economic administration (Slovakia),
- A greater degree of self-administration is aimed at by means of creating a corporation with legal personality similar to the German model of a public trusteeship (*Treuhandanstalt* in Germany, Bulgaria, Hungary),
- Other countries organised privatisation agencies in the legal form of state owned enterprises (Latvia, Estonia).

As different as the organisational base are the procedural models of privatisation.

When discussing problems of privatisation, one should be aware that core questions concerning final aims and dimensions of privatisation in the case of state versus municipal ownership of basic public goods like supply with water, electricity, public transport etc. have not yet been solved.

7. Levels of comparison and different legal traditions

Legal tradition and legal culture are composed by a complex system of law-making factors on different levels. All these factors of formal and informal, parliamentary and extra-parliamentary, judicial, cultural, historical, social, economical, and educational nature contribute to norms that are valid at present. Therefore the development of the actual legal systems of post-socialist Central and Eastern European countries has to be the object of comparative law analysis on different levels.

The first task of comparison is to make sure of the current normative basis, consisting of laws, decrees, and resolutions issued by law making bodies and normally published in official law gazettes. This sounds easier than it was or still is, because under socialist party regimes there existed numerous secret laws that about which the public was not informed. Such laws were used as special instruments of non-democratic governance.

The generally accepted principle of any constitutional state, i.e. that normative acts get binding force only if published in a way that guarantees free access to all addressees of this norm was (and still is) not accepted by undemocratic socialist or communist states. In the former Soviet Union as well as in the former Yugoslav Socialist Federation, for instance, there existed special gazettes only for secret legislation. And in socialist legal systems governmental (ministerial, administrative, or even mixed party and governmental) law created by decrees and orders prevailed over law making by parliament. For this reason, in certain cases legal sources were available only with difficulties or not at all to normal citizens. This practice led to specific problems in comparative law concerning socialist or communist states. The situation improved in so far as the basic standards characteristic of a constitutional state are now more or less established in all post-socialist countries. Secret legislation has been abandoned; legislation by parliamentary bodies and laws published in law gazettes have again become much more important.

Right from the start, comparative law has yet to manage another problem: the language problem. Legal texts have stronger ties to a specific national legal culture and tradition than other texts (in the field of science, social and political science, or economy), the authors of which can argue by reflection and terminological explanation, whereas a legal norm just states a rule and does not comment itself. Legal norms have to wait for external interpretation in the process of application. In penal law, constitutional law, or civil law (private law) similar terms in different legal systems frequently do not have identical meaning, but differ more or less in certain aspects. This is the reason why theories of translation make up a constituent part of comparative law. Let me cite two examples: a) in constitutional law the law-making competence of the President of the Russian Federation (issuing *ukazy*, i.e. decrees) does not correspond to any similar competence of the Federal President in the German constitution, and b) in penal law preparatory activities before committing a crime are penalised whereas in others only those activities that can be qualified as "attempt" are penalized – how can we translate these terms? Either by choosing a literal translation close to the origin, or by using the corresponding but not identical term of the other language, adding perhaps a footnote to explain the difference? The author prefers the second approach because translation of legal texts should try to transfer the meaning into the professional legal terminology of the language into which the text is to be translated to make it understandable for lawyers of this country. The translator should not try to create a new language that might be literally closer to the origin but farther from professional terminology.

Normative and also systematic comparison of norms and legal institutions are often criticised because they allegedly neglect the difference between what is laid down as norms and how the real situation of legal practice looks like. This difference between norm and reality does always exist. But this incongruity had and partly still has a special dimension as far as socialist or communist law is concerned, a law based on the ideological and institutional preconditions of a Marxist one-party regime. Keeping this fact in mind, the normative approach is useful and necessary to gain a first systematic overview.

In Germany a first and controversially discussed attempt of normative and systematic comparative analysis between the different legal systems of the two German States, the socialist German Democratic Republic and the democratic Federal Republic of Germany, was carried out in 1970 by a commission of experts, organised by the Federal Ministry for Inner-German Relations. This comparative study was followed later on by studies dealing with the political, social, and economical systems of the two German states.[15]

In spite of the controversies mentioned, these handbooks were accepted as useful help for political and administrative decision-making in the relations between East and West Germany; nowadays they serve as useful sources for comparative research on former socialist states like the GDR. These comparative reports followed a line which was defined as "immanent criticism", i.e., an approach which tried to compare and evaluate eastern and western legal institutions not only by western standards, but to find out the essential differences between a democratic and a socialist legal order and to make clear their specific standards and show the deficits of the socialist legal system.

In comparing different legal systems, the institutional framework and the application of law should be included to give the comparative approach a broader dimension. The institutional approach deals with law-making and law-applying institutions in order to get additional information about the process and about the legal political debate on drafts and controversial alternatives. Sometimes the knowledge of rejected parts of drafts and of pro and contra argumentation helps to understand the final solution reached by the foreign lawmaker – and the gaps and contradictions of the respective law. The institutional approach also deals

with organisations and formal competencies and the indirect influence of political parties on the process of law making and on administrative organs that are applying law (Segert 1994 and 1995; Luchterhandt 2000b; Reetz 2004).

8. Jurisdiction in transition

Jurisdiction plays a new and significant role in the process of democratic transformation of former socialist legal systems. For decades, courts under the roof of socialist one-party states (or states largely dominated by a leading socialist or communist party) had lost their independence and especially their function of legally controlling political and state power and of protecting the basic human rights of the citizens. To enable courts to play again or even for the first time in the legal history of a state (like in Russia or the Balkan states of former Yugoslavia) this new role was and still is not only a question of new legislation but also of education and qualification of judges who have to work under new and different conditions.

Especially the constitutional courts in the post-socialist countries of Central and Eastern Europe contributed, and still do, a lot to the transformation of democratic legislation, legal proceedings and passing judgements under standards of human rights and democratic market economy.

Although all former socialist or communist legal systems in Europe have their origins in the traditions of Continental European Civil Law, significant differences can be found in legal traditions. Eastern European legal thinking seems to be remarkably more theory orientated and less case orientated, i.e. less aiming at the solution of cases. As in former socialist society there was little or almost no room left for controversial discussion, also jurisprudence was not a field for critical analysis of legislative decisions, for alternative proposals and for opposition against the leading opinions that were in line with party policy. One result was the lack of commentary literature where one can find interpretations of the wording of the law combined with an overview over the most important court decisions and critical proposals how to solve problems that arise due to gaps, contradictions in terms, partly impracticable or obsolete regulations. This lack of commentaries persists to a certain degree even today.

Also, there is still not much of a dialogue between jurisprudence and jurisdiction, the latter quoting no books and commentaries but only precedents. But such a fruitful dialogue might be just an expectation of a German lawyer who is used to it, whereas in other countries, belonging to the Anglo-American Common Law family, courts traditionally refer in general only to other court decisions but not to legal literature.

Commentaries in former socialist jurisprudence were normally published under the control of the Ministries of Justice that used this form of publication to underline the ideological and legal mainstream of the authors who would be in line with party policy. So these commentaries as well as the text books edited either by the Ministries themselves or by state-owned publishing houses and written by carefully selected groups of authors got the character of binding legal authorities.[16]

A comparative overview shows that nearly all post-socialist states in Central and Eastern started to reform and reorganise their court systems. The main elements of this reform that aims at making judges more independent are:

- De-politicisation of court system and judges. Several constitutions and laws of post-socialist countries (art. 86 constitution of Georgia, art. 113 const. Lithuania, art. 178 const. Poland, art. 137 const. Slovakia, art. 50 const. Hungary) hold membership in a political party incompatible with the function of a judge. In democratic western states (including Germany), membership of a judge in a political party is a normal part of political life and sometimes even a precondition for being elected by electoral committees the members of which belong to political parties or to a certain political tendency.
- Judges are no longer elected directly by citizens (while voting for parliamentary bodies) and not only for a limited electoral period (mostly of five years) but nominated and appointed by special constitutional organs (like councils of state in Poland, Bulgaria and Croatia) or special parliamentary bodies.
- Only persons with an academic education, i.e. studies of law at a law faculty, can be appointed as judges. The election of representatives or other people as judges, who have a political background but not the necessary academic qualification (like in former years in the Soviet Union, the GDR and other socialist states the so called "judges of the people"), is no longer accepted.
- New constitutional courts got the competence to control the constitutionality of laws and other legal sources enacted by parliamentary and governmental bodies (Gäßner 1999; Kutter, Schröder 1999; Brunner 1993; Frowein, Marauhn 1998; Traut 1997). In some post-socialist countries, the citizens have the right to sue protection in case of violation of their human rights.[17]
- Additionally, in all European countries that are members of the Council of Europe[18] individuals have the right to bring a violation of their human rights before the European Court of Human Rights in Strasbourg, and also cases of potentially unlawful judgement of a court.[19]
- In several Central and Eastern European countries (e.g., in Bulgaria, Croatia, Georgia, the Czech Republic, and Poland, in Russia this competency was transferred later from the constitutional court to the ordinary courts) the new constitutional courts decide on the constitutionality of political parties and organisations in order to prevent undermining of the democratic legal order and usurpation or abuse of political power by political parties, as it was the case for decades under socialist or communist one-party regimes.
- In several post-socialist countries constitutional

and administrative courts got the competency to decide on cases of unlawful acts of governmental or administrative bodies of the state brought before the court by citizens whose rights were violated (Luchterhandt 2002a; Kuss 1990; Starilov 1999; Gotzes 2003).

By these and other legislative means the former socialist states tried to eliminate step by step the influence of socialist or communist legal traditions which were not in line with standards of a democratic constitutional state developed before and after the Second World War in Western Europe.

9. Pre-socialist and socialist legal traditions

After the first step of the east-enlargement of the European Union took place on the 1st of May 2004, when eight of the former socialist/communist states of Central and Eastern Europe joined the EU as full members (Lithuania, Latvia, Estonia, Hungary, Poland, the Czech Republic, Slovakia, and Slovenia), the question under comparative aspects might arise: why only and why just these countries?

The answer can be found in the rather successful pre-socialist traditions and democratic experiences of these countries after World War One, i.e. in the twenties and early thirties of the last century. In the Balkans, this line of positive legal and political traditions and institution building can even be traced back to the time of Austro-Hungarian Monarchy, when the tradition of functioning professional administration and court system (including private property law and a property register) of states and communities was established, at least in Slovenia and Croatia.

Following this line, it can be stated that the Western Balkan states of Slovenia and Croatia and parts of Bosnia and Herzegovina as well as Hungary, the Czech Republic, and Slovakia are privileged by better legal traditions than Serbia, Montenegro, Kosovo, Albania, and Macedonia where these traditions had not been developed.

The Baltic States, too, gained their first experience with organising a democratic state already before the socialist period. It seems obvious that this pre-socialist experience led to a more successful adaptation of national legislation to European law and later on to the adoption of the European "aquis communautaire". The difference in legal tradition is also the reason why countries that did not participate in the common European history of law during the last century (like Russia, Belarus, or Ukraine since the Soviet Revolution of 1917) or even longer (like the Turkish Republic) could hardly be taken into consideration as candidates for joining the EU in the nearer future.

The socialist/communist legal system was pushed by early soviet leaders (Lenin, Stalin et al.) as a radical alternative to traditional bourgeois law. Basic institutions of private law like private property were either totally eliminated (e.g., private property in land in Russia and the Soviet Union) or cut short in a very restrictive way, like private treaty law, company law, and the general autonomy of legal persons (natural persons and legal entities) and tied to the rules of a centrally planned economy without private initiative.

The ruling socialist or communist party converted state organs and constitutional institutions and even the courts into instruments for maintaining its dictatorial power and left no room for principles of democracy, a constitutional state and the protection of individual human rights versus the power of the state. In the end, this approach failed totally. Socialist state-owned economy lost its competitiveness on the world market, judges lost their independency and citizens lost basic human rights in socialist theory and in practice.

10. European law: the permanent reform

Analysing the protracted process of transition and "double" transformation in the previous socialist Central-, East- and South East European countries, one can conclude that the most relevant stabilizing factor now and in the future is the existence of the European Union and the chance to become a member of it. The legal development of these countries is particularly affected by EU accession.

The ongoing process of developing and extending European law will lead finally to a more harmonised European law regime ("Europäischer Rechtsraum") of national legal systems under the roof of common European law. As this European law establishes general priority over the law of the national member states, including their national constitutional law, different national legal traditions may survive in numerous details of civil, penal, and procedural law but not in basic norms and legal institutions.

The European Court in Luxemburg is carrying out permanent comparative law in practice, new primary European treaty law is created by the member states in an ongoing process (Treaties of Maastricht, Amsterdam, and recently Nice, 2001, reforming the Roman Treaty of the European Economic Community of 1957) and also secondary law is enacted continually (by the law making organs of the EU: European Commission, European Council of Ministries, European Parliament and most important by the European Court) – this process is binding automatically and without former ratification upon all courts and state organs of all member states, it leads to assimilation and to the diminishing of former socialist relicts in Eastern Europe in the near future.

Based on the treaty of Nice, 2001, the European Convent, consisting of 105 members (two thirds are deputies, delegated by the national parliaments of the member states and by the European Parliament, the rest is nominated and delegated by European Institutions and national governments) elaborated a draft for a new European Constitution.

The main aims of this approach are:

- To improve efficiency in decision making of the enlarged organs of the EU by reorganising the structure and the number of members of organs (most

controversial: diminishing the number of members of the European Commission, i.e., abolishing the current principle of "one member state – one commissioner"),
- To reorganise the overcomplicated procedure of law making by concentrating the competencies in the hand of one central law making body (Legislative Council),
- To introduce basic principles of federal organisation (distribution of competencies between Union and member states by means of three categories: exclusive competencies of the Union, mixed competencies of the Union and its member states, exclusive competencies of the member states),
- To give priority to Union law in case of conflict with national law of member states,
- To adjust the weight of votes of the member states in the organs of the Union according to the number of inhabitants and the economic contribution of each country (measured against the gross national product of member states in relation to each other),
- To combine in this way the classical principle of equality of the subjects of international law (one state – one vote in the context of a confederation) with the integrative principle in the context of a Union of quasi-federative character (avoiding *expressis verbis* all terms of federation),
- To organise a system of redistribution of financial subsidies in favour of a coherent development of all members by way of transfers to less developed members,
- To strengthen the democratic legitimacy of the EU and its organs by increasing the influence of the European Parliament and by giving more weight to decision making by a majority of votes instead of unanimous decision making,
- To achieve more transparency in the administration and decision making of the EU organs, including the right of all EU citizens to information and to petition to the organs (unfortunately without obliging the organs to answer within a certain time).

Whether or not this ambitious project will be realised as planned or in another, more reduced way, after the constitutional treaty has been rejected in referenda in France and the Netherlands – the European Union and its enlargement are already now one of the success stories of European history, including the successful integration of post-socialist countries.

References

Arnold, Jörg, Nora Karsten, Helmut Kreicker 2001: Menschenrechtsschutz durch Art. 7 Abs. 1 EMRK. In: Neue Justiz 11: 561 passim.

Boguslawskij, Mark; Rolf Knieper (eds.) 1998: Wege zu neuem Recht: Materialien internationaler Konferenzen in Sankt Petersburg und Bremen. Berlin: Berlin Verlag.

Bönker, Frank; Klaus Müller; Andreas Pickel (eds.) 2002: Post communist Transformation and the Social Sciences: Cross-Disciplinary Approaches. Lanham MD: Rowman & Littlefield.

Boulanger, Christian (ed.) 2002: Recht in der Transformation. Potsdamer Textbücher Band 7. Berlin: Berliner Debatte Wissenschaftsverlag.

Brunner, Georg 1993: Die neue Verfassungsgerichtsbarkeit in Osteuropa. In: Zeitschrift für ausländisches öffentliches Recht und Völkerrecht 53: 819–870.

Brunner, Georg (ed.) 1995: Juristische Bewältigung des kommunistischen Unrechts in Osteuropa und Deutschland. Berlin: Berlin Verlag.

Buchner, Silke 1996: Die Rechtswidrigkeit der Taten von „Mauerschützen" im Lichte von Art. 103 II GG unter besonderer Berücksichtigung des Völkerrechts. Frankfurt etc.: Lang.

Bunce, Valerie 2000: Comparative Democratization. Big and Bounded Generalizations. In: Comparative Political Studies 33 (6–7): 703–734.

Constantinesco, Léontin-Jean 1983: Die rechtsvergleichende Wissenschaft. Vol. 3, Rechtsvergleichung. Cologne etc.: Heymann.

David, René; Günther Grasmann 1988: Einführung in die großen Rechtssysteme der Gegenwart, 2nd German ed. Munich: C.H. Beck.

Eser, Albin; Jörg Arnold (eds.) 2000–2003: Strafrecht in Reaktion auf Systemunrecht: Vergleichende Einblicke in Transitionsprozesse. 7 Vols. Freiburg im Breisgau: Edition iuscrim.

Frowein, Jochen A.; Thilo Marauhn (eds.) 1998: Grundfragen der Verfassungsgerichtsbarkeit in Mittel- und Osteuropa. Berlin etc.: Springer.

Gäßner, Barbara 2004: Zur Verfassungsgerichtsbarkeit in den Subjekten der Russischen Föderation unter besonderer Berücksichtigung der Normenhierarchie. Berlin: Berliner Wissenschafts-Verlag.

Gotzes, Andrea (transl.) 2003: Rußland auf dem Weg zum Rechtsstaat? Antworten aus der Zivilgesellschaft, translated from Russian. Berlin: Deutsches Institut für Menschenrechte.

Großfeld, Bernhard 1990: The strength and weakness of comparative law. Oxford: Clarendon Press.

Hokema, Grit 2001: Der aktuelle Fall: Das Urteil des Europäischen Gerichtshofs für Menschenrechte in der Sache Streletz, Kessler und Krenz – eine späte Genugtuung für die Opfer des DDR-Grenzregimes. In: Humanitäres Völkerrecht 2: 107 passim.

Homann, Ulrike 2003: Herausforderungen an den Rechtsstaat durch Justizunrecht: die Urteile bundesdeutscher Gerichte zur strafrechtlichen Aufarbeitung von NS- und DDR-Justizverbrechen. Berlin: Berliner Wissenschafts-Verlag.

Hopfmann, Arndt (ed.) 2001: Transformationstheorie: Stand, Defizite, Perspektiven. Münster: LIT.

Hopfmann, Arndt; Michael Wolf (eds.) 1998: Transformation und Interdependenz: Beiträge zu Theorie und Empirie der mittel- und osteuropäischen Systemwechsel. Münster: LIT.

Kellermann, Alfred E.; Jaap W. de Zwaan; Jenö Czuczai (eds.) 2001: EU Enlargement: The Constitutional Impact at EU and National level. The Hague: T.M.C. Asser Press.

Krüßmann, Thomas M. 1998: Privatisierung und Umstrukturierung in Rußland: zur Rolle des Rechts als Instrument struktureller Wirtschaftsreform im Übergang zur Marktwirtschaft. Berlin: Berlin Verlag / Wien: Verlag Österreich.

Kuss, Klaus-Jürgen 1990: Gerichtliche Verwaltungskontrolle in Osteuropa. Berlin: Nomos Verlagsgesellschaft.

Kutter, J. Vivika; Tim Schröder 1999: Die Rechtsprechung des russischen Verfassungsgerichts 1995–1999. Berlin: Berlin Verlag.

Lecheler, Helmut 2002: Einführung in das Europarecht. Munich: C.H. Beck.

Lecheler, Helmut 2003: Der Beitrag der allgemeinen Rechtsgrundsätze zur europäischen Integration. In: Zeitschrift für europarechtliche Studien 3: 337 passim.

Lowitzsch, Jens 2002: Privatisierung und Beteiligung. Berlin: Berliner Wissenschafts-Verlag.

Luchterhandt, Galina (ed.) 2000: Politische Parteien in Rußland: Dokumente und Kommentare. Bremen: Edition Temmen.

Luchterhandt, Otto (ed.) 2002a: Verwaltung und Verwaltungsrecht im Erneuerungsprozeß Osteuropas. Berlin: Berliner Wissenschafts-Verlag.

Luchterhandt, Otto (ed.) 2002b: Neue Regierungssysteme in Osteuropa und der GUS. Berlin: Berliner Wissenschafts-Verlag.

Maikowski, Tatjana 2002: Staatliche Kooperationspflichten gegenüber dem Internationalen Strafgerichtshof. Berlin: Berliner Wissenschafts-Verlag.

Meissner, Jörg 2003: Die Zusammenarbeit mit dem Internationalen Strafgerichtshof nach dem Römischen Statut. Munich: C.H. Beck.

Merkel, Wolfgang 1999: Systemtransformation: eine Einführung in die Theorie und Empirie der Transformationsforschung. Opladen: Leske & Budrich.

Merkel, Wolfgang; Eberhard Sandschneider; Dieter Segert (eds.) 1996: Theorien, Ansätze und Konzeptionen, 2nd ed., vol. 1, Systemwechsel. Opladen: Leske & Budrich.

Merkel, Wolfgang; Eberhard Sandschneider; Dieter Segert (eds.) 1997: Parteien im Transformationsprozeß. Vol. 3, Systemwechsel. Opladen: Leske & Budrich.

Merkel, Wolfgang; Eberhard Sandschneider; Dieter Segert (eds.) 2000: Zivilgesellschaft und Transformation. Vol. 5, Systemwechsel. Opladen: Leske & Budrich.

Nichols, Philip M. 1997: Creating a Market Along the Silk Road: A Comparison of Privatisation Techniques in Central Asia. In: New York University Journal of International Law and Politics 29 (3): 299–336.

O'Donnell, Guillermo 2000: Democracy, Law, and Comparative Politics. In: Studies in Comparative International Development 36 (1): 7–36.

Quasten, Dirk 2003: Die Judikatur des Bundesgerichtshofs zur Rechtsbeugung im NS-Staat und in der DDR. Berlin: Duncker & Humblot.

Reetz, Axel 2004: Die Entwicklung der Parteiensysteme in den baltischen Staaten. St. Gallen: Wilhelm-Surbir-Verlag.

Roggemann, Herwig 1993. Systemunrecht und Strafrecht am Beispiel der Mauerschützen in der ehemaligen DDR. Berlin: Berlin Verlag.

Roggemann, Herwig 1994: Die Justiz auf dem Prüfstand. In: Im Namen des Volkes? Über die Justiz im Staat der SED. Wissenschaftlicher Begleitband zur Ausstellung des Bundesministeriums der Justiz. Leipzig: Forum Verlag.

Roggemann, Herwig 1995. Fragen und Wege zur Rechtseinheit in Deutschland. Berlin: Berlin Verlag.

Roggemann, Herwig (ed.) 1996: Eigentum in Osteuropa. Berlin: Berlin Verlag.

Roggemann, Herwig 1997a. Die strafrechtliche Aufarbeitung der DDR-Vergangenheit am Beispiel der „Mauerschützen" und Rechtsbeugungsverfahren. In: Neue Justiz, 226 passim.

Roggemann, Herwig 1997b: Functional Changes in Property Rights in East and West. In: E. J. Kirchner and K. Wright (eds.): Security and Democracy in Transition Societies, Conference Proceedings, University of Essex 12–14 June 1997. Colchester: Forum on Central and Eastern Europe of the University of Essex, 391–427.

Roggemann, Herwig 1998a: Politischer Systemwechsel, Systemunrecht und Strafrecht – Zur Kritik des deutschen Modells aus vergleichender Sicht. In: Jürgen Weber and Michael Piazolo (eds.): Justiz im Zwielicht. Ihre Rolle in Diktaturen und die Antwort des Rechtsstaates. Munich: Olzog.

Roggemann, Herwig 1998b: The Problem of Legality and the Limits of a Sub Poena Duces Tecum Decision in the Blaškić-Case. In: Zbornik Radova Pravnog Fakulteta u Splitu 49–50 (1–2): 17–40.

Roggemann, Herwig 1998c: Die Internationalen Strafgerichtshöfe, 2nd ed. Berlin: Berlin Verlag.

Roggemann, Herwig (ed.) 1999a: Die Verfassungen Mittel- und Osteuropas. Berlin: Berlin Verlag.

Roggemann, Herwig 1999b: Functional Change in Property Rights in the Welfare States: Lessons from the Federal Republic of Germany. In: I. Collier, H. Roggemann, O. Scholz and H. Tomann (eds.): Welfare States in Transition – East and West. Houndsmills et al.: Macmillan Press / New York: St. Martin's Press.

Roggemann, Herwig 2002: National Security and Protection of the State in National and International Criminal Procedure – Systematic and Comparative Aspects. In: Herwig Roggemann and Petar Šarčević (eds.): National Security Interests and International Criminal Justice. The Hague/London/Boston: Kluwer.

Roggemann, Herwig; Jens Lowitzsch (eds.) 2002: Privatisierungsinstitutionen in Mittel- und Osteuropa. Berlin: Berliner Wissenschafts-Verlag.

Roggemann, Herwig; Anita Kurtović; Petar Novoselec (eds.): 2004: Rechtsfragen der Zusammenarbeit mit der Internationalen Strafgerichtsbarkeit in Kroatien und Deutschland. (= Arbeitspapiere des Interuniversitären Rechtszentrums Split / Berlin no. 6). Berlin: Osteuropa-Institut der Freien Universität Berlin.

Rose, Richard; William Mishler; Christian Haerpfer (eds.) 2000: Democracy and its alternatives. Baltimore, Md.: Polity Press.

Segert, Dieter (ed.) 1994: Konfliktregulierung durch Parteien und politische Stabilität in Ostmitteleuropa. Frankfurt et al.: Lang.

Segert, Dieter (ed.) 1995: Parteien in Osteuropa: Kontext und Akteure. Opladen: Westdeutscher Verlag.

Starilov, Jurij N. 1999: Gerichtliche Verwaltungskontrolle im System des russischen Staats- und Verwaltungsrechts. Speyer: Forschungsinstitut für Öffentliche Verwaltung.

Strasser, Wolfgang 2001: Schießbefehl an der Mauer, Strafrechtliche Verurteilung der Befehlsgeber für Tötung unbewaffneter Flüchtlinge an der innerdeutschen Grenze wegen Totschlags in mittelbarer Täterschaft bestätigt, Krenz u. a. gegen Deutschland. In: Europäische Grundrechte-Zeitschrift 7–8: 210 passim.

Szczerbiak, Aleks 2002: Dealing with the Communist Past or the Politics of the Present? Lustration in Post-Communist Poland. In: Europe-Asia Studies 54(4): 553 passim.

Traut, Johannes Ch. (ed.) 1997: Föderalismus und Verfassungsgerichtsbarkeit in Rußland. Baden-Baden: Nomos-Verlagsgesellschaft.

Veen, Hans-Joachim (ed.) 2003: Nach der Diktatur, Demokratische Umbrüche in Europa – zwölf Jahre später, vol. 1. Cologne et al.: Böhlau Verlag.

Zweigert, Konrad, Hein Kötz 1998: Introduction to Comparative Law, 3rd ed. Oxford: Clarendon Press.

Endnotes

[1] This paper was first presented at an International Conference at Nagoya University, Japan, 2004. The author thanks his Japanese colleagues for their generous hospitality and for fruitful discussions and his assistant Dipl.-Jur. Stefan Hanisch for helpful co-operation.

[2] Recognized as the still most popular teaching book on Comparative Private Law in Germany is: Zweigert/Kötz 1996; see also Zweigert/Kötz 1998; Constantinesco 1983; David/Grasmann 1982; Großfeld 1990.

[3] In Germany, centres of legal research and teaching on Eastern Europe (Ostrechtsforschung) are: Institute for East European Studies, Free University of Berlin (<http://www.oei.fu-berlin.de>); Institute for East European Law, University Cologne (<http://www.uni-koeln.de/jur-fak/ostrecht/index.htm>); Department of East European Law, University Hamburg (<http://www2.jura.uni-hamburg.de/ostrecht/>); Institute for East European Law, Christian Albrechts University Kiel (<http://uni-kiel.de/eastlaw>); and other institutes at Passau and Dresden.

The following jounals, specialised in East European Law, are edited in Germany: Osteuropa-Recht, Monatshefte für osteuropäisches Recht, Wirtschaft und Recht in Osteuropa, Jahrbuch für Ostrecht, Recht in Ost und West (discontinued 1998). A couple of other German journals specialise in Eastern Europe: Osteuropa, Osteuropa Wirtschaft, Süd-Osteuropa, Berliner Osteuropa Info.

[4] On its recognition in German Law see the following court decisions: BVerfGE <Collection of decisions of the Federal Constitutional Court> 52, 187/202 f. ("Vielleicht"); E 37, 271/285 ("Solange I"); E 73, 339/378 ff. ("Solange II"); E 75, 223/254 f.; E 85, 191/204; E 89, 155/188 ("Maastricht"); E 102, 147/162 ff. ("Bananenmarkt"). For constitutional impacts of the accession of Central and Eastern European countries to the EU see: Kellermann/de Zwaan/2001: 267–386; Roggemann 1994.

[5] See the following court decisions: BGHSt (Collection of decisions of the Federal Court in criminal case) 45, 64, 69; 46, 292, 299; Federal Constitutional Court, Juristenzeitung, 2001: 975.

[6] The adaptation of the legal system to EU law is content of the Association Agreements (still in force with Bulgaria, concluded 8 March 1993, in force since 1 February 1995, and Romania, concluded Febru-

ary 1, 1993, in force since 1 February 1995) and of the Stabilisation and Association Agreements (SAA) (as concluded with Macedonia and Croatia).

[7] See the so-called Screening planning by the European Commission: <http://www.europa.eu.int/comm/enlargement/negotiations/chapters/index.htm>.

[8] For the Final declaration of the Zagreb summit see: The European Commission, External relations, The EU's relations with Southern Europe (Western Balkans), see: <http://europa.eu.int/comm/external_relations/see/summ_11_00/statement.htm>. The special conventions in questions are the Stabilisation and Association Agreements (SAA). For detailed information on these new EU policies see: <http://europa.eu.int/comm/external_realtions/see/actions/sap.htm>.

[9] For the full text of the agreements see: <http://europa.eu.int/comm/external_relations/see/docs/index.ht>. Negotiations for a SAA between the EU and Albania are still ongoing. Work is underway on a feasibility study for the opening of negotiations on a SAA between the EU and Bosnia-Herzegovina.

[10] The reports are available at: <http://europa.eu.int/comm/external_relations/see/docs/index.htm>.

[11] BGHSt 39: 1.

[12] BGHSt 40: 218.

[13] Decision of the European Court of Human Rights in the case no. 37201/97 (K.-H. Winkler vs. Germany). In: Europäische Grundrechte-Zeitschrift (EuGRZ) 2001: 219 (= Neue Juristische Wochenschrift, NJW, 2001: 3042); Decision of the Grand Jury by 3 March 2001 in the cases no. 34044/96, 35532/97 und 44801/98 (Streletz, Keßler und Krenz vs. Germany), EuGRZ 2001: 210 (= NJW 2001: 3035). For the full text of both decisions see: European Court of Human Rights, <http://www.echr.coe.int/>. See also Arnold, Karsten, Kreicker (2001); Strasser 2001; Hokema 2001.

[14] See the WWW site of the tribunal:<http://www.icty.org>.

[15] Materialien zum Bericht der Bundesregierung zur Lage der Nation, Sixth Electoral Period, Document VI/308b, ed. by Bundesministerium für Innerdeutsche Beziehungen. Bonn 1972. (The author of this paper was member of the working group Comparison of Political Systems and co-author of the chapter Criminal Law [pp. 225–280] and Administration of Justice [pp. 181–344]); Materialien zum Bericht der Bundesregierung zur Lage der Nation, ed. by Bundesministerium für Innerdeutsche Beziehungen. Bonn 1974.

[16] Apart from that, in the Soviet Union, the Union Supreme Court and the Union High Economic Court as well as the Union republics' Supreme Courts and High Economic Courts have been used to monitor court decisions, and their Plenums to issue special guiding decrees with binding force upon the application of law by the lower instance courts. This tradition is continued in most of the successor states. However, the possibility of the leading political party or of the government to take influence on the content of judgments continues.

[17] A citizen is granted the right to file a claim in case of violation of his/her individual rights and/or the individual right to file a claim in certain cases without any violation of an own individual right. Approximately 12 of the Eastern European and former Soviet post-socialist countries have established some kind of citizen's right to file a complaint with the Constitutional Court or any other body of constitutional control (e.g. Albania, Georgia, Croatia, Czech Republic, Hungary, Macedonia, Montenegro, Poland, Russia, Serbia, Slovenia). However, there are great differences between the countries concerning the possible subject of a complaint.

[18] Not to be mixed up with the European Council of the European Union.

[19] The following Eastern European countries are members of the Council of Europe and have ratified the Convention for the Protection of Human Rights and Fundamental Freedoms as well as the additional protocol No. 11: Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Estonia, Georgia, Hungary, Latvia, Lithuania, Macedonia, Moldova, Poland, Romania, Russia, Slovakia, Slovenia, Ukraine, Armenia and Azerbaijan. Armenia and Azerbaijan are so far the last countries that have come under the jurisdiction of the Court. They joined the Council of Europe on 25 January 2001, ratified the Convention and protocol No. 11 on 15 April 2002.