

Europe (Old and New) and European Law

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Outline

- European Law
- Council of Europe
- Transition cases
- Themes

European Law

Council of Europe COE

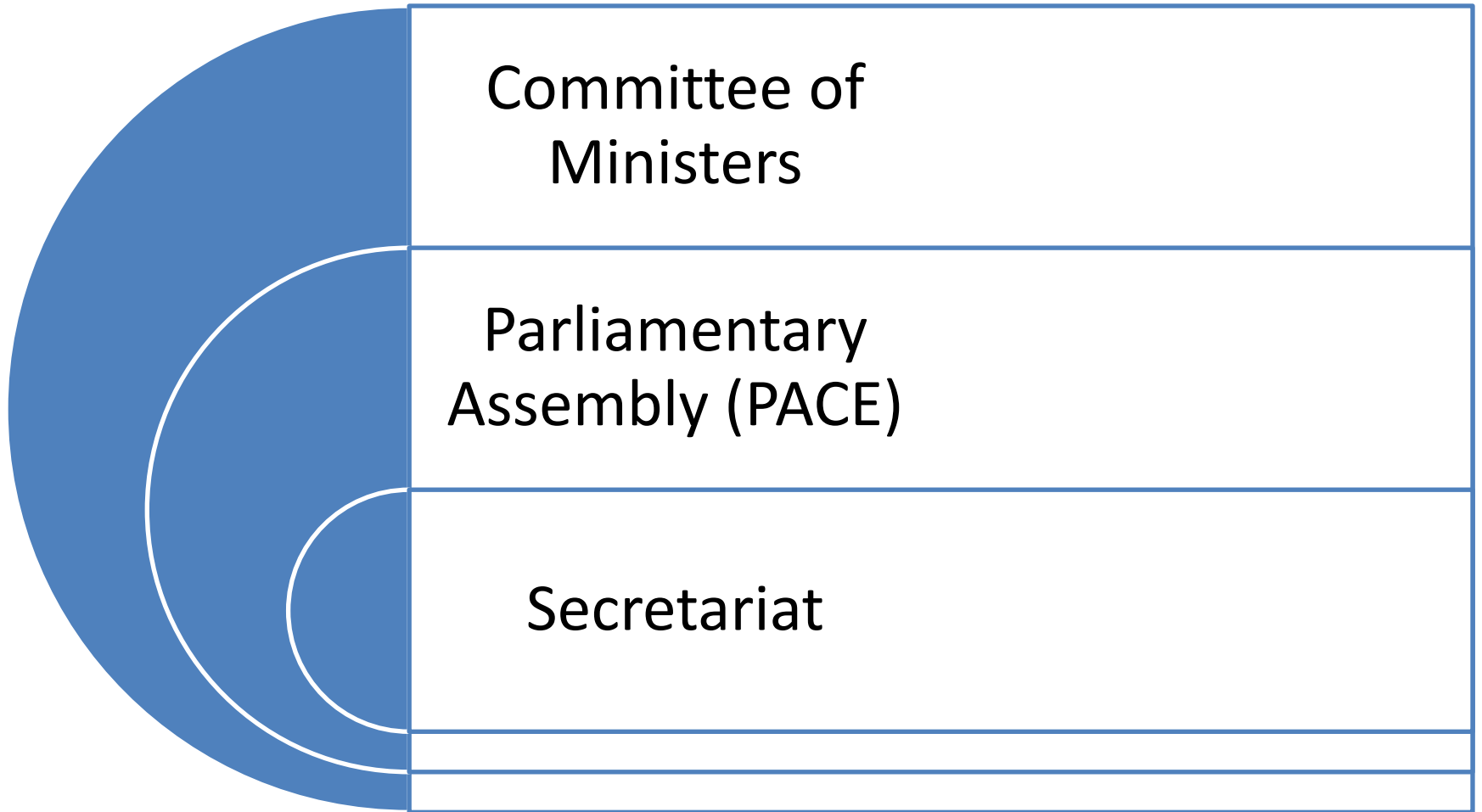
European Union EU

Organisation Security and Cooperation in Europe OSCE

European Law

Council of Europe	European Union
47	27
Human Rights	Political and Economic Integration
Strasbourg	Brussels/Luxembourg/Strasbourg
Traditional International Law	“Supranational” law (QMV law-making powers, direct effect, supremacy)
European Court of Human Rights (Strasbourg)	European Court of Justice (Luxembourg)
Human Rights	Political and economic integration

Council of Europe





European Convention and Court

- 1950 European Convention
- European Court of Human Rights
- Inter state complaints
- Individual petition
- First every international human rights court
- Vast jurisprudence
- Overburdened

European Court of Human Rights Transition and Democratic Consolidation

Transition

- Accountability
- Property cases
- Democratic consolidation
- Dealing with difference

Accountability

Accountability

- Border crossing convictions
- GDR law similar in form to rule of law based system, but practice very different.
- Practice and orders infringed IHRL and basic principles of GDR law.
- Such a state practice, in breach of IHRL and national legislation cannot be a law
 - *Streletz v Germany* 35532/97 and 44801/98 App nos 34044/96,

Property cases

Restitution

Basic principles

- Article 1 of Protocol No. 1
- No general obligation to restore property which was transferred to them before they ratified the Convention.
- However...
- Gold coins case
- Claim not sufficiently established - no 'asset'.
- *Kopecky v Slovakia* App no 44912/98, [2004], 28 September 2004

German Reunification

- Von Maltzan v Germany (App no 71916/01 ; 71917/01 ; 10260/02) 2 March 2005
- expropriated in GDR 1945-9 [79].
- FRG has no responsibility for acts of the Soviet occupying power in GDR, nor for acts of GDR towards its own citizens [82].
- Exceptional context of reunification [110].
- Wide margin of appreciation [111].
- A belief that the laws would be changed to their benefit is not a protected interest under P1-1 [112].
- Applicants had no 'possessions' [114] and so the complaint is inadmissible. (Article 14 is also therefore inapplicable).

German Reunification: Jahn

- *Jahn v Germany* (App no 46720/99) (2005) 30 June 2005
- E. German expropriations
- Between 1989 and reunification, Modrow law
- Post reunification the legislature passed a remedial law.
- The law did not provide for any compensation [95].
- GDR often failed to enforce the requirement that land be returned to state; if the GDR had enforced the law, the applicants would not have been in possession [104].
- The second property law was designed to avoid benefiting persons who did not fulfil conditions during the GDR regime obtaining an unfair advantage [108].
- Differs from earlier cases in the total lack of compensation [110].
- Unique context of German reunification [113].

Restitution

- Restitution: *Zvolsky v Czech Republic* (App no 46129/99) (2002) 12 November 2002
- Frustrating restitution: *Strain v Romania* (App no 57001/00) 21 July 2005
- Compensation: *Pincova and Pinc v Czech Republic* (App no 36548/97), 5 November 2002; *Scutari v Moldova* (App no 20864/03), 26 July 2005

Bug river case

- *Broniowski v Poland* (App no 31443/96) (2004) 40 EHRR 21
- Poland recognised a 'right to credit' for persons repatriated from across the Bug River. (2004 [126])
- Court recognised extraordinary complexity and difficulty of situation facing Poland.
- 2005 Broniowski. Case struck off after friendly settlement. Legislation allowing for either a claim to credit or compensation up to 20% of the value of the land.

Democratic consolidation

Democratic Consolidation

- Free and Fair electoral processes
- Limits of democracy (Militant Democracy)

Free and Fair Electoral Processes

- Clear legal basis
 - Krasnov and Skuratov v Russia (Application no. 17864/04 and 21396/04) 19 July 2007
 - Kovach v Ukraine (Application no 39424/02), [2008] 7 February 2008
- Fair procedures
 - Podkolzina v Latvia App no 46726/99, 9 April 2002
- Independent election body
 - Grosaru v Romania application no. 78039/01, 2 March 2010

Limits of democracy

- Lustration
 - Sidabras v Lithuania (Applications nos. 55480/00 and 59330/00), 27 July 2004
- Political Office Exclusions
 - Zdanoka v Latvia (App no 58278/00) 2006/03/16 (note dissents)
 - Adamsons v Latvia (application no. 3669/03), 24 June 2008

Limits of Democracy

- Political Parties
 - Partidul Comunistilor (Nepeceristi) v Romania
Application no. 46626/99, 2005/02/05
- Free expression
 - Rekvenyi v Hungary App no 25390/94;
1999/05/20
 - Vajnai v Hungary (application no. 33629/06),
[2008] 8 July 2008

Rekvenyi 1999

- 47. The Court observes that between 1949 and 1989 Hungary was ruled by one political party. Membership of that party was, in many social spheres, expected as a manifestation of the individual's commitment to the regime. This expectation was even more pronounced within the military and the police, where party membership on the part of the vast majority of serving staff guaranteed that the ruling party's political will was directly implemented. This is precisely the vice that rules on the political neutrality of the police are designed to prevent. It was not until 1989 that Hungarian society succeeded in building up the institutions of a pluralistic democracy, leading to the first multi-party parliamentary elections in more than forty years being held in 1990. The impugned amendment to the Constitution was adopted some months prior to the second democratic parliamentary elections in 1994.
- 48. Regard being had to the margin of appreciation left to the national authorities in this area, the Court finds that, especially against this historical background, the relevant measures taken in Hungary in order to protect the police force from the direct influence of party politics can be seen as answering a "pressing social need" in a democratic society.

Vajnai 2008

- Firstly, Mr Vajnai was a politician not participating in the exercise of powers conferred by public law, while Mr Rekvényi had been a police officer. Secondly, almost two decades have elapsed from Hungary's transition to pluralism and the country has proved to be a stable democracy (see in this connection *Sidabras and Džiautas v. Lithuania*, nos. 55480/00 and 59330/00, § 49, ECHR 2004-VIII; *Rainys and Gasparavičius v. Lithuania*, nos. 70665/01 and 74345/01, § 36, 7 April 2005). It has become a Member State of the European Union, after its full integration into the value system of the Council of Europe and the Convention. Moreover, there is no evidence to suggest that there is a real and present danger of any political movement or party restoring the Communist dictatorship. The Government have not shown the existence of such a threat prior to the enactment of the ban in question.

Dealing with Difference

- Roma
- Language and Nationality
- Deeply Divided Communities

Difference: Roma

- Roma
- School segregation
 - *DH v Czech Republic (App no 57325/00) (2008) 47 EHRR 3 2007/11/13*
 - *Oršuš and others v Croatia (App no 15766/03), 16 March 2010*
- Sterilization
 - *VC v Slovakia App no 18968/07, [2011], 8 November 2011*

Difference: Language and Nationality

- Language
 - Podkolzina v Latvia App no 46726/99, [2002], 9 April 2002
- Dual Nationality
 - Tănase and Chirtoaca v Moldova (App no 7/08), 18 November 2008

Deeply divided communities

- Consociationalism
- Sejdic and Finci v Bosnia and Herzegovina App nos 27996/06 and 34836/06, 22 December 2009
- Note especially Bonello's dissent

Themes

Key legal principles

- Temporal competence
- Legality (lawfulness)
- Legitimacy
- Proportionality
- Margin of Appreciation
 - Context sensitivity
 - Evolution over time

Tensions

- International and National?
- Law and Politics?
- Justice and Peace?
- Rights and democracy?
- Law in books and law in action?
- East and West?

Workshops

- You may find it useful to check:
 - The press release from the court.
 - The dissenting opinions if any
 - The report from the Committee of Ministers on implementation.
 - If you have the time:
 - Human rights NGOs
 - Any local newspaper or parliamentary coverage.

Finally

Thank you!