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Human Rights Law

MARK E. WOJCİK AND MELINDA LORD*

I. Introduction

The year 2003 was both a significant and controversial year for international human rights, as the United States cited the prevention or vindication of human rights abuses as one of the reasons to invade Iraq. While there was no question about the horrific and widespread human rights abuses committed in Iraq over the past decades, doubts arose regarding whether the humanitarian rationale for the war against Saddam Hussein was a sufficient substitute for the failure to find weapons of mass destruction or a link between Iraq and the terrorist attacks on the United States. The war in Iraq was not primarily about saving the Iraqi people from mass slaughter. At the time of the invasion, there was no slaughter in progress or imminent as was the case in other nations where there was no humanitarian intervention.¹ The United States failed to obtain explicit U.N. Security Council approval or support for its actions, raising further questions about the claimed humanitarian intervention.² Before the invasion, the United States did not charge Saddam Hussein and other leaders with violations of international human rights law, nor did it otherwise appear to seek legal accountability before an international tribunal for past atrocities of the

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As in earlier years, the omission of any particular subject in this annual review of recent developments in international human rights law should not be interpreted to mean that the subject is unimportant. Because of the intersection of human rights norms with other areas of law, and because of severe space limitations for all authors, many important developments are necessarily covered in other substantive articles in this issue of *The International Lawyer* and in other human rights publications. The inclusion of a particular subject, and the ordering of subjects, should likewise not be interpreted to suggest that some human rights are considered to be more important than others, or more deserving of attention.

1. See, e.g., Ken Roth, *War in Iraq: Not a Humanitarian Intervention*, in 2004 HUMAN RIGHTS WATCH WORLD REPORT: HUMAN RIGHTS & ARMED CONFLICT 13, 15, 26, 33 [hereinafter Roth]; Joe Stork & Fred Abrahams, *Sidelined: Human Rights in Postwar Iraq*, in 2004 HUMAN RIGHTS WATCH WORLD REPORT: HUMAN RIGHTS & ARMED CONFLICT 93 [hereinafter Stork & Abrahams].

2. See Roth, *supra* note 1, at 31–33.

Iraqi regime.³ The claim that Iraq was invaded primarily for humanitarian reasons also threatened to undermine future support for future humanitarian interventions.⁴ Additional criticism was voiced that certain policies of the Bush administration threatened to damage respect for the rule of law and that some policies were intended to shield executive actions from serious judicial scrutiny.⁵

Other developments affecting international human rights pointed toward an increasing convergence of international human rights law and international humanitarian law, in particular the increased targeting of civilians in armed conflicts around the world. Sadly, the American Bar Association Section of International Law and Practice lost Arthur Helton, one of its leaders, in an attack directed against United Nations personnel in Iraq.

Decisions of international criminal tribunals continue to provide an important framework for prosecuting the most serious violations of human rights, including acts of genocide, war crimes, and crimes against humanity. These international criminal law developments, including indictments (such as the indictment of Liberian President, Charles Taylor, by the Special Court for Sierra Leone on June 4, 2003), challenges to indictments, extradition requests, judgments, and appellate decisions are beyond the scope of this review.

A. DEATH PENALTY

A woman sentenced to death by stoning was acquitted by an appellate court in Katsina State, Nigeria.⁶ The woman, Amina Lawal, had been sentenced to death in 2002 for giving birth to a child ten months after she was divorced.⁷ The death penalty had been stayed so that the woman could care for her child.⁸ The appellate court found (4–1) that the prosecution had failed to produce four witnesses, as required under Shariah law.⁹ The case drew international attention and criticism.¹⁰

In other developments relating to the death penalty, the United Nations Human Rights Committee found that Canada had violated the Right to Life guaranteed by Article 6 of the International Covenant on Civil and Political Rights (ICCPR) by deporting to the United States, a person who would face the death penalty there, without first receiving assurances that the United States would not execute.¹¹

3. See, e.g., Stork & Abrahams, *supra* note 1, at 109, 113–19. See also Richard Dicker & Elise Keppler, *Beyond the Hague: The Challenges of International Justice*, in 2004 HUMAN RIGHTS WATCH WORLD REPORT: HUMAN RIGHTS & ARMED CONFLICT 194.

4. Roth, *supra* note 1, at 34 (arguing that “[I]f its defenders continue to try to justify [the invasion of Iraq] as humanitarian when it was not, they risk undermining an institution that, despite all odds, has managed to maintain its viability in this new century as a tool for rescuing people from slaughter”).

5. See, e.g., Alison Parker & Jamie Fellner, *Above the Law: Executive Power After September 11 in the United States* in 2004 HUMAN RIGHTS WATCH WORLD REPORT: HUMAN RIGHTS & ARMED CONFLICT 140, 141–45; Kenneth Roth, *Drawing the Line: War Rules and Law Enforcement Rules in the Fight Against Terrorism*, in 2004 HUMAN RIGHTS WATCH WORLD REPORT: HUMAN RIGHTS & ARMED CONFLICT 177, 185–88.

6. Somini Sengupta, *Facing Death for Adultery, Nigerian Woman Is Acquitted*, N.Y. TIMES, Sept. 26, 2003, at A3.

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. *Judge v. Canada*, U.N. Doc. CCPR/C/78/D/829/1998 (United Nations Human Rights Committee 2003).

1. *Protocol 13*

Mexico continued its litigation against the United States for alleged violations of its nationals' rights under the Vienna Convention on Consular Relations. In the *Avena* case before the International Court of Justice, Mexico won an order of preliminary measures in February 2003 to order the United States to avoid executing Mexican nationals on death row.¹² Although the challenged violations relate to all arrests, attention has been focused on only those arrests for which individuals face the death penalty.

One other development in 2003 was the entry into force of Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Concerning the Abolition of the Death Penalty in all Circumstances.¹³ Protocol No. 13 was opened for signature on May 3, 2002 in Vilnius, Lithuania, and it entered into force on July 1, 2003.

B. HUMAN RIGHTS AND CORPORATE RESPONSIBILITY

On August 13, 2003, the United Nations Sub-Commission on the Promotion and Protection of Human Rights unanimously adopted a resolution containing draft Norms on the Responsibility of Transnational Corporations and Other Business Enterprises with Regard to Human Rights.¹⁴ Article 1 recognizes that the obligation of states to protect human rights includes ensuring that transnational corporations and other business enterprises respect human rights, "including the rights and interests of indigenous peoples and other vulnerable groups."¹⁵

The norms remind corporations not to engage in nor benefit from war crimes, crimes against humanity, genocide, torture, forced disappearance, forced or compulsory labour, hostage-taking, extrajudicial, summary or arbitrary executions, other violations of humanitarian law and other international crimes against the human person as defined by international law, in particular human rights and humanitarian law.¹⁶

The norms also include provisions on worker's rights, respect for national sovereignty and human rights, consumer and environmental protection, and implementation of the norms.¹⁷

12. See Case Concerning *Avena* and Other Mexican Nationals: Request for the Indication of Provisional Measures: Order, 2003 I.C.J. 128 (Feb. 5), available at <http://www.icj-cij.org>. Mexico won the merits of the case in early 2004. See also Case Concerning *Avena* and Other Mexican Nationals (Mex. v. U.S.), 2004 I.C.J. 128 (Mar. 31), available at <http://www.icj-cij.org>.

13. Council of Europe, Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Concerning the Abolition of the Death Penalty in all Circumstances (May 3, 2002), available at www.worldpolicy.org/globalrights/dpdschr-dp2.html. For the ratification status and reservations, see <http://conventions.coe.int/treaty/EN/cadreprincipal.htm>.

14. U.N. ESCOR Sub-Commission on the Promotion and Protection of Human Rights, Res. 2003/16, U.N. ESCOR, 55th Sess., Agenda Item 7, at 52, U.N. Doc. E/CN.4/Sub.2/2003/L.11 (2003).

15. U.N. ESCOR Sub-Commission on the Promotion and Protection of Human Rights, 55th Sess., Agenda Item 4, U.N. Doc. E/CN.4/Sub.2/2003/12/Rev.2 (2003). Article 2 elaborates:

Transnational corporations and other business enterprises shall ensure equality of opportunity and treatment, as provided in the relevant international instruments and national legislation as well as international human rights law, for the purpose of eliminating discrimination based on race, colour, sex, language, religion, political opinion, national or social origin, social status, indigenous status, disability, age—except for children, who may be given greater protection—or other status of the individual unrelated to the inherent requirements to perform the job, or of complying with special measures designed to overcome past discrimination against certain groups.

16. *Id.* art. 3.

17. *Id.* arts. 4–23.

C. MIGRANT WORKER RIGHTS

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,¹⁸ adopted by the U.N. General Assembly in 1990,¹⁹ entered into force on July 1, 2003 after ratification by twenty-two countries.²⁰ Among its many substantive provisions are statements such as: "[I]t shall be unlawful for anyone, other than a public official duly authorized by law, to confiscate, destroy or attempt to destroy identity documents, documents authorizing entry to or stay, residence or establishment in the national territory or work permits."²¹ It includes several provisions for further protection of workers and their families, including rights for migrant workers and their families "to receive any medical care that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equality of treatment with nationals of the State concerned."²² Children of migrant workers are guaranteed the right to a name, registration of their birth, and a nationality.²³ Children of migrant workers are also guaranteed educational rights.²⁴

D. SEXUAL ORIENTATION

The year 2003 saw major advances in the rights of gay and lesbian persons, including recognition of same-sex marriages in Canada and Massachusetts and the decision from the United States Supreme Court that sodomy laws were unconstitutional.

On May 1, 2003, the British Columbia Court of Appeal ruled that denying marriage licenses to same-sex couples violated the Canadian Charter of Rights and Freedoms.²⁵ Section 15(1) of that Charter provides that: "Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination . . . based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability."²⁶ Discrimination based on "sexual orientation," although not expressly prohibited in the categories listed, is prohibited as an "analogous ground" of non-discrimination under the Charter.²⁷ In its decision, the Court found that the denial of marriage licenses to same-sex couples was discrimination that was neither reasonable nor

18. G.A. Res. 45/158, U.N. GAOR, 45th Sess., Supp. No. 49A at 262, U.N. Doc. A/45/49 (1990), available at http://www.unhcr.ch/html/menu3/b/m_mwctoc.htm [hereinafter Migrant Workers Convention].

19. G.A. Res. 45/158, U.N. GAOR, 45th Sess., 69th mtg., U.N. Doc. A/RES/45/158 (1990).

20. For the ratification status, see Office of the High Commissioner for Human Rights, *Status of Ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (June 10, 2003), available at <http://www.unhcr.ch/html/menu3/b/migrants.htm>.

21. Migrant Workers Convention, *supra* note 18, art. 21.

22. *Id.* art. 28. "Such emergency medical care shall not be refused them by reason of any irregularity with regard to stay or employment."

23. *Id.* art. 29.

24. "Each child of a migrant worker shall have the basic right of access to education on the basis of equality of treatment with nationals of the State concerned. Access to public pre-school educational institutions or schools shall not be refused or limited by reason of the irregular situation with respect to stay or employment of either parent or by reason of the irregularity of the child's stay in the State of employment." *Id.* art. 30.

25. *EGALE Canada Inc. v. Canada (Attorney General)*, [2003] B.C.L.R.4th.

26. CAN. CONST. (Constitution Act, 1982) pt. I (Canadian Charter of Rights and Freedoms), § 15(1), available at <http://laws.justice.gc.ca/en/charter/> (last visited May 23, 2004).

27. *EGALE Canada Inc.*, [2003] B.C.L.R.4th para. 82.

justifiable.²⁸ The court also reformulated the “common law definition of marriage” as “the lawful union of two persons to the exclusion of all others.”²⁹ The court suspended any remedy, however, until July 2004, in order to give the federal and provincial governments “time to review and revise legislation to bring it into accord with this decision.”³⁰

The following month, the Ontario Court of Appeal reached a similar conclusion, also finding that the denial of marriage licenses to same-sex couples violated the Canadian Charter of Rights and Freedoms and the dignity of persons in same-sex relationships.³¹ Unlike the British Columbia court, however, the Ontario court did not find any reason to perpetuate the continued violation of rights by further delaying a remedy.³² Because there was no evidence that immediate implementation of the court’s ruling would harm the public, threaten the rule of law, or deny anyone else of the benefits of legal recognition of their marriages, the court legalized same-sex marriages in Ontario on June 10, 2003.³³

The British Columbia court, observing that Ontario ordered the immediate granting of marriage licenses to same-sex couples, lifted its stay and likewise ordered the immediate issuance of marriage licenses to same-sex couples in British Columbia.³⁴

The initial Canadian same-sex marriage decisions preceded the U.S. Supreme Court’s landmark ruling in *Lawrence v. Texas*,³⁵ which found that a Texas criminal statute prohibiting sexual activity between persons of the same sex violated substantive due process.³⁶ In *Lawrence*, the U.S. Supreme Court also expressly overruled its earlier decision in *Bowers v. Hardwick*, which had upheld the constitutionality of Georgia’s sodomy statute.³⁷ Justice Kennedy wrote that the widely-criticized decision in *Bowers* “was not correct when it was decided, and it is not correct today.”³⁸

Human rights lawyers particularly noted Justice Kennedy’s *Lawrence* opinion because it cited favorably to international and foreign precedent, including authorities that were available at the time of the *Bowers* decision.³⁹ Justice Kennedy cited those sources not because they controlled the interpretation of the U.S. Constitution, but because those sources undermined the assertion in *Bowers* that the majority’s arguments were “insubstantial in our Western civilization.”⁴⁰ In addition to the foreign sources cited, the U.S. Supreme Court’s ruling in *Lawrence* brought U.S. law into conformity with international standards on sexual orientation. For example, the United Nations Human Rights Committee previously ruled

28. *Id.* para. 158.

29. *Id.* para. 159.

30. *Id.* para. 161.

31. *Halpern v. Toronto (City)*, [2003] 172 O.A.C. 726 paras. 108, 142.

32. *Id.* para. 154.

33. *Id.*

34. *EGALE Canada, Inc. v. Canada (Attorney General)*, [2003] B.C.L.R.4th 226 (judgment of July 8, 2003). In March 2004, the Court of Appeal for Quebec also ruled in favor of same-sex marriages. See Colin Campbell, *Canada: Quebec Court Upholds Gay Marriage*, N.Y. TIMES, Mar. 20, 2004, at A5.

35. *Lawrence v. Texas*, 123 S. Ct. 2472 (2004).

36. Justice Kennedy, writing for the majority, stated: “The petitioners are entitled to respect for their private lives. The State cannot demean their existence or control their destiny by making their private sexual conduct a crime. Their right to liberty under the Due Process Clause gives them the full right to engage in their conduct without the intervention of the government.” *Id.* at 2484.

37. *Bowers v. Hardwick*, 478 U.S. 1039 (1986).

38. *Lawrence*, 123 S. Ct. at 2484.

39. See *id.* at 2481. The court cited from the United Kingdom *Wolfenden Report* and several decisions from the European Court of Human Rights. See *id.*

40. *Id.* at 2481.

that sodomy laws in Australia violated privacy rights under the International Covenant on Civil and Political Rights.⁴¹ International human rights law was also cited in a concurring opinion in *Grutter v. Bollinger*,⁴² another landmark decision of the U.S. Supreme Court's 2003 Term.⁴³

In *Lawrence*, Justice Scalia criticized the citation of foreign precedent⁴⁴ and warned that the decision could lead to a variety of dangers, including same-sex marriages similar to those authorized in Canada.⁴⁵

After *Lawrence* declared that sodomy laws were an unconstitutional violation of due process, the Massachusetts Supreme Judicial Court ruled on November 18, 2003 that the denial of marriage licenses to same-sex couples violated the Massachusetts State Constitution.⁴⁶ Furthermore, the Canadian marriage cases were among the authorities Massachusetts court cited.⁴⁷ Staying its decision for 180 days to provide the legislature with an opportunity to bring the state statutes into conformity with its decision,⁴⁸ the court ordered the state to issue marriage licenses on May 17, 2004, a date that marks the 50th anniversary of the U.S. Supreme Court's decision in *Brown v. Board of Education*.

41. *Toonen v. Australia*, U.N. Doc. CCPR/C/50/D/488/1992 (U.N. Human Rights Committee 1994), available at <http://www.unhchr.ch/tbs/doc.nsf/0/d22a00bcd1320c9c80256724005e60d5?OpenDocument> (last visited May 23, 2004). See generally Johanna E. Bond, *International Intersectionality: A Theoretical and Pragmatic Exploration of Women's International Human Rights Violations*, 52 EMORY L.J. 71, 97 (2003). The United States is a party to the International Covenant on Civil and Political Rights, but it ratified the treaty with a reservation that it should be non-self-executing within the United States. For a 2004 decision of the Human Rights Committee in a case involving sexual orientation, see *Young v. Australia*, U.N. Doc. CCPR/C/78/D/941/2000 (Human Rights Committee 2003), available at <http://www.unhchr.ch/tbs/doc.nsf/0/3c839cb2ae3bef6fc1256dac002b3034?OpenDocument> (last visited May 23, 2004).

42. *Grutter v. Bollinger* 539 U.S. 306 (2003).

43. In *Grutter*, Justice O'Connor, writing for the majority, found that the Equal Protection Clause of the U.S. Constitution did not prohibit the University of Michigan Law School from using race in admissions decisions to further the law school's compelling interest in "obtaining the educational benefits that flow from a diverse student body." *Id.* at 343. In a concurring opinion, Justice Ginsberg observed that the result was in accord with international human rights norms:

The Court's observation that race-conscious programs "must have a logical end point," . . . accords with the international understanding of the office of affirmative action. The International Convention on the Elimination of All Forms of Racial Discrimination, ratified by the United States in 1994, see State Dept., *Treaties in Force* 422-423 (June 1996), endorses "special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms." G.A. Res. 2106 (XX), 20 U.N. GAOR, Supp. No. 14, at 47 art. 2(2), U.N. Doc. A/6014 (1966). But such measures, the Convention instructs, "shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved." *Id.*; see also *id.* at art. 1(4) (similarly providing for temporally limited affirmative action); A. Res. 34/180, 34 U.N. GAOR Supp. No. 46 at 193, U.N. Doc. A/34/46 (1979) (authorizing "temporary special measures aimed at accelerating de facto equality" that "shall be discontinued when the objectives of equality of opportunity and treatment have been achieved").

Grutter, 539 U.S. 306, at 344 (Ginsberg, J., concurring).

44. *Lawrence*, 123 S. Ct. at 2495 (Scalia, J., dissenting).

45. *Id.* at 2497 (Scalia, J., dissenting).

46. *Goodridge v. Dep't of Pub. Health*, 798 N.E.2d 941 (Mass. 2003).

47. See *id.* at 969.

48. See also Opinion of the Justices to the Senate, 802 N.E.2d 565 (Mass. 2004).

E. U.N. GENERAL ASSEMBLY ADVISORY OPINION ON ISRAEL'S SECURITY WALL

Invoking its power to seek an advisory opinion from the International Court of Justice,⁴⁹ the United Nations General Assembly, on December 8, 2003, requested an opinion on "the legal consequences arising from the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem. . . ."⁵⁰ A decision from the International Court of Justice is expected in 2004.

F. ALIEN TORT CLAIMS ACT

In December 2003, the U.S. Supreme Court granted certiorari⁵¹ to review the Alien Tort Claims Act (ATCA),⁵² a statute frequently invoked in human rights litigation. The case involved a Mexican national, Humberto Alvarez-Machain, who sued under the ATCA and the Federal Tort Claims Act⁵³ for damages arising from his forced, transborder abduction from Mexico.⁵⁴ The case was expected to answer questions left open when the U.S. Supreme Court considered the kidnapping case in 1992,⁵⁵ including whether the forced abduction was in "violation of the law of nations" so as to provide federal court jurisdiction under the ATCA.⁵⁶ A decision from the U.S. Supreme Court is expected in 2004.

G. AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

The year 2003 finished on a hopeful note as the Union of Comoros deposited the fifteenth instrument of ratification of the Protocol to the African Charter on Human and Peoples' Rights to Establish an African Court on Human and Peoples' Rights.⁵⁷ The new court will interpret and apply the African Charter on Human and Peoples' Rights and other relevant human rights instruments ratified by the States appearing in cases before the court.⁵⁸ The court will "complement the protective mandate of the African Commission on Human and Peoples' Rights"⁵⁹ and have advisory jurisdiction for organs of the Organization of African Unity.⁶⁰ The Protocol establishing the court becomes effective thirty days after deposit of the fifteenth instrument of ratification.⁶¹

49. U.N. CHARTER 96(1); I.C.J. STAT. art. 65.

50. G.A. Res. ES-10/14, U.N. GAOR, 10th Sess., U.N. Doc. A/RES/ES-10/14 (2003).

51. See *Sosa v. Alvarez-Machain*, 124 S. Ct. 807 (2003); *United States v. Alvarez-Machain*, 124 S. Ct. 821, 821-22 (2003).

52. 28 U.S.C. § 1350 (2000).

53. 28 U.S.C. § 1346(b)(1) (2000).

54. See *Alvarez-Machain v. United States*, 331 F.3d 604, 607 (9th Cir. 2003).

55. *United States v. Alvarez-Machain*, 504 U.S. 655, 669 (1992).

56. See *Alvarez-Machain*, 331 F.3d at 607.

57. Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, OAU Doc. OAU/LEG/EXP/AFCHPR/PROT (1998), available at <http://www1.umn.edu/humanrts/africa/courtprotocol2004.html>.

58. *Id.* art. 3.

59. *Id.* art. 2.

60. *Id.* art. 4.

61. *Id.* art. 34(3).

II. European Human Rights

A. THE EUROPEAN COURT OF HUMAN RIGHTS

While 2003 was certainly another busy year for the European Court of Human Rights, there was a slight decline in the total number of judgments from 2002. For a second consecutive year, the number of judgments delivered declined: 703 judgments delivered in 2003; 844 judgments delivered in 2002; and 888 judgments delivered in 2001. Previously, the court had seen a dramatic rise in the number of judgments it delivered; the year 1999 concluded with only 177 judgments delivered, while in 2000, the Court presented 695 decisions.

Because of the growing docket with which the Court has had to contend in the past several years, the Council of Europe Committee of Ministers reiterated its commitment to the court's long-term effectiveness at the 112th Session in Strasbourg on May 15, 2003.⁶² At that session, the Committee of Ministers endorsed a three-prong approach set forth by the Steering Committee for Human Rights. The approach includes:

- preventing violations at the national level and improving domestic remedies;
- optimizing the effectiveness of the filtering and subsequent processing of applications before the Court; and
- improving and accelerating execution of judgments of the Court.

Subsequently, on November 26, 2003, the Steering Committee for Human Rights issued an Interim Activity Report on the implementation of the Committee of Ministers' May 2003 declaration.⁶³ According to the Report, the Steering Committee is preparing three documents regarding measures to be taken at the national level:

- recommendations to member States for improved domestic remedies;
- guidance to member States on how to ensure that draft laws, existing legislation and administrative practices comply with European Convention on Human Rights standards; and
- advice to member States on university education and professional training covering the European Convention on Human Rights.

Additionally, the Interim Activity Report summarizes the Committee of Ministers' draft resolution which calls for examination of systemic problems of the Court's execution of judgments. In view of the constant and numerous complaints brought under Article 6 section 1 (the right to a fair trial), this resolution proposes consequences to those State members that are repeated offenders.⁶⁴ Out of a total of 703 judgments brought by the court in

62. *Declaration of the Comm. of Ministers Guaranteeing the long-term effectiveness of the European Court of Human Rights*, Eur. Consult. Ass., 112th Sess. (2003), available at http://cm.coe.int/stat/E/Public/2003/adopted_texts/declarations/dec-15052003.htm (last visited June 9, 2004).

63. *Interim Activity Report of the Steering Comm. for Human Rts.*, Eur. Consult. Ass., 112th Sess., Doc. No. 026 Addendum I Final (2003), available at [http://www.coe.int/T/F/Droits_de_l'Homme/CDDH\(2003\)026_%20E%20Interim.asp#TopOfPage](http://www.coe.int/T/F/Droits_de_l'Homme/CDDH(2003)026_%20E%20Interim.asp#TopOfPage) (last visited June 9, 2004) [hereinafter *Interim Activity Report*].

64. *Id.* Article 6, § 1 provides:

In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic

2003, 521 of those judgments dealt with Article 6 section 1 violations, often committed by the same few offending States.

The Steering Committee for Human Rights will assess the aforementioned activities with a view toward adoption of a Final Activity Report at its next meeting in April 2004. The Steering Committee will then present its Final Report to the Committee of Ministers at the 114th Session in May 2004.

The Interim Activity Report also outlines additional work that is to be done on the Preliminary Draft Protocol No. 14, which provides for amending the Convention's control system. This "control system" refers to mechanisms for ensuring efficiency and continuity in the functioning of the Court, especially in response to the ever-increasing number of cases filed before it.⁶⁵ The Preliminary Draft Protocol discusses amending the European Convention on Human Rights and Fundamental Freedoms regarding such matters as the number of judges, terms of office, and committees. The Committee of Ministers hopes to review the Preliminary Draft Protocol at its 114th Session in May 2004.

Finally, preliminary draft amendments to the Convention are under further discussion regarding EC/EU accession to the Convention.

Along with Article 6 section 1 violations, the Court reviewed numerous complaints for Article 1 of Protocol 1 violations (property rights),⁶⁶ Article 8 violations (right to respect for private and family life),⁶⁷ and Article 5 violations (right to liberty and security).⁶⁸ Undoubtedly, the most unusual case before the Court in 2003 was the case of *De Savoie v.*

society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

65. FRANCIS G. JACOBS & ROBIN C. A. WHITE, *THE EUROPEAN CONVENTION ON HUMAN RIGHTS* 415 (2d ed. 1996).

66. *Interim Activity Report*, *supra* note 63. Article 1 of Protocol 1 provides:

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

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

67. Council of Europe, *Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 11*. Article 8 provides:

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

68. *Id.* art. 5 provides:

1. Everyone has the right to liberty and security of the person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
 - (a) the lawful detention of a person after conviction by a competent court;
 - (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfillment of any obligation prescribed by law;
 - (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

Italy, alleging a violation in the prohibition of male descendants of the ex-king to enter Italy. The case was struck out.

B. THE EUROPEAN COURT OF JUSTICE

The year 2003 saw a change in the Presidency of the European Court of Justice (ECJ). In October, Mr. Vassilios Skouris was elected President of the Court for a three-year term. He succeeds Judge Gil Carlos Rodriguez Iglesias, who has held the Presidency since 1994.⁶⁹

The past year evidences the inevitable changes and further demands on the European Court of Justice by the expansion of the European Union. An increase in member States predictably creates a heavier case load for the ECJ. Moreover, the ECJ is broadening its role as lawmaker. According to some experts, an eventual EU constitution will undoubtedly include a Charter of Fundamental Rights, which will further involve the Court in justice and home affairs and human rights related issues. The introduction of a European arrest warrant will require the Court to make determinations in the area of criminal law as well.⁷⁰

Including cases of the Court of First Instance, the European Court of Justice issued a total of 116 judgments and opinions in the year 2003. Of those cases, approximately ten dealt with human rights related matters such as issues of social policy (in the area of discrimination) and freedom of movement of persons.⁷¹

A full annual report of the ECJ's activities for year 2003 should be published and available online during March 2004.

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- (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the legal competent authority;
 - (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
 - (f) the lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language, which he understands, of the reasons for his arrest and of any charge against him.
3. Everyone arrested or detained in accordance with the provisions of paragraph (1)(c) of this Article shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.

69. Press Release No. 86/03 (Oct. 7, 2003), at <http://curia.eu.int/en/actu/communiqués/cp03/info/cp0386en.htm> (last visited May 23, 2004).

70. *Charlemagne: Government by Judges? The European Court of Justice Emerges Blinking into the Limelight*, *Economist*, Jan. 17, 2004, at 28.

71. European Court of Justice: Press Releases—Cases, at <http://curia.eu.int/en/actu/communiqués/cp03/aff/index.htm> (last visited May 24, 2004).