

University of Nebraska - Lincoln

DigitalCommons@University of Nebraska - Lincoln

Court Review: The Journal of the American Judges
Association

American Judges Association

2007

Court Review: Volume 44, Issue 4 – An American Judge at the European Court of Human Rights

Donald Shaver

Superior Court in Modesto, California

Follow this and additional works at: <http://digitalcommons.unl.edu/ajacourtreview>



Part of the [Jurisprudence Commons](#)

Shaver, Donald, "Court Review: Volume 44, Issue 4 – An American Judge at the European Court of Human Rights" (2007). *Court Review: The Journal of the American Judges Association*. 260.

<http://digitalcommons.unl.edu/ajacourtreview/260>

This Article is brought to you for free and open access by the American Judges Association at DigitalCommons@University of Nebraska - Lincoln. It has been accepted for inclusion in Court Review: The Journal of the American Judges Association by an authorized administrator of DigitalCommons@University of Nebraska - Lincoln.

An American Judge at the European Court of Human Rights

Donald Shaver



We followed President Barack Obama into Strasbourg, France, last April, but our group of 27 judges and justices did not generate quite as many headlines as he did. Not surprising, since it was only coincidence that our seminar on the European Court of Human Rights (ECHR), sponsored by the International Judicial Academy, happen to follow a NATO summit meeting also occurring in Strasbourg. No worries, we were all excited to be there anyway.

The International Judicial Academy, our sponsor, is a non-profit organization that funds judicial education on international justice through grants from private foundations. The Academy chose 24 state and federal judges and justices from the United States and three justices from Argentina for this seminar on international human rights.

Strasbourg is a picturesque and welcoming town, and we were all anxious to find out what this whole “Court of

Human Rights” thing was about. After a short bus ride down the Allee De la Robertsau, we arrived at the complex known as the “Institutions Eurpoeennes,” where the “Parlement European” (European Parliament), “Counseil De L’Europe” (European Council), and “Cour Européenne Des Droits De L’Homme” (European Court of Human Rights) are located. The ECHR building is a shiny, ultra-modern steel and glass structure with little resemblance to a traditional courthouse.

In order to understand the role of the ECHR, you can think of it as a sort of civil-rights supreme court for the European member countries. Individual citizens can file claims, called “applications,” against a member nation alleging a violation of the basic human-rights law, the European Convention on Human Rights, which all members have adopted. The court can adjudicate the case and, if appropriate, render a money judgment, called “just satisfaction,” against the state, which is required to honor the judgment. In fact, the Court has recently

rendered a number of judgments against Russia totaling more than 350,000 Euros on claims brought by Chechen citizens for human-rights violations committed by Russian troops in the uprising in Chechnya. Russia has paid these judgments.

The ECHR grew out of the efforts following World War II to formulate an international bill of rights, similar to the ones in the United States and elsewhere. The resulting document was the Universal Declaration of Human Rights, now widely recognized as the model statement of the minimum rights to which any citizen should be entitled. The idea was that, based on this model, each of seven major regions of the world would negotiate their own specific binding conventions on human rights, suitable to their region. Three of the regions have actually succeeded in doing so: the Council of Europe, the Organization of American States (comprising North and South America), and the African Union. But in all the regions except Europe, the member countries were unwilling to establish a court with superior jurisdiction to the national courts. In Europe, however, owing primarily to the dramatic human-rights abuses witnessed during World War II, the member countries agreed to a strong independent enforcement agency. Thus, in 1959, the ECHR was born.

Although other regions have human-rights courts, their judgments are considered advisory. The ECHR is unique in that it is the only human-rights court where the judgment is binding on its members and superior to the national courts in most instances. Forty-seven countries are members, and with one judge elected from each member country, that makes the ECHR the largest international court in the world. Claims may be submitted in any of the 41 languages used in the member states.

The court has rendered judgments on a number of current and controversial topics, many of which will be familiar to American lawyers, finding, for example, that:

- maximum detention periods pending questioning or charging may not be circumvented by the device of releasing and immediately rebooking the defendant;
- detention of an inmate pending admission to a psychiatric facility in the general jail population may not be unduly prolonged;
- dismissal of homosexuals from the military for that reason alone is a privacy violation;
- refusal to perform a therapeutic abortion necessary to protect the health of the mother is a violation;
- detention of a journalist who refuses to disclose confidential sources is a violation;
- a requirement that employees join a union as a condition of employment is a violation;
- termination of employment based on religious beliefs is a violation; and,
- members of Parliament may not be required to swear an oath based on the Gospels.

With the ECHR acting as the judicial branch in adjudicating claims, the Committee of Ministers of the Council of Europe acts as the executive branch in enforcing the judgments, and the Parliamentary Assembly of the Council of Europe acts as the legislative branch, enacting new laws or amendments to the European Convention on Human Rights. But why would a country such as Russia see it in their interest to honor the judgments of the ECHR? The answer is simple: the free-market economy. Many emerging democracies see involvement in the free market through the European Union as the pathway to prosperity, and the European Union has unofficially linked membership in the EU to membership in the ECHR.

We listened with rapt attention to presentations from Jean-Paul Costa, president of the ECHR, and ECHR Judges Lech Garlicki (Poland) and Egbert Myjer (Netherlands). As Americans, where this function has always been carried out by our national courts, we had a difficult time imagining a scenario where an international court could have the last word over our Supreme Court, but as unlikely as that is to happen here, it works well for the 800 million citizens of the patchwork of independent countries that make up Europe. We came away with an appreciation for how unique the ECHR is—there truly is nothing quite like it in the world.



Donald Shaver hears criminal cases as a judge on the Superior Court in Modesto, California. He is cochair of the International Criminal Law Committee for the ABA Section of International Law. In 2006, he became the first American judge to work with the International Criminal Court in The Hague, on paid sabbatical as a visiting professional sponsored by the California Judicial Council.