Fact-finding missions: The Strasbourg experience

Costas Papaconstantinou, LLB (Hons), LLM, PhD; Advocate (Republic of Cyprus)

In the vast majority of cases brought before it the ECtHR is able to reach a judgment on the basis of decisions made and documents created in the course of prior domestic proceedings. However, where fundamental facts remain in dispute between the parties, the ECtHR has, in the past, conducted fact-finding missions.

The basis upon which such fact-finding missions are conducted is to be found in Art. 38(1) ECHR which provides simply that the Court may, "if need be, undertake an investigation". However, in 2003, the ECtHR introduced an annex to its Rules of Court which deals specifically and in some detail with the conduct of such investigations.

The ECtHR has, in the past, carried out its fact-finding role by sending judicial delegations to hear witnesses and by conducting judicial "on-the-spot" investigations. For example, in the case of Ireland v UK (181/178, Series A No. 29), concerning the arrest and detention of IRA suspects by the British security forces, 119 witnesses were heard by the (former) European Commission. In a series of cases brought by individuals against Turkey from the mid-1990s the former Commission and (since 1998) the new Court have held fact-finding hearings in order to adjudicate on factual differences between the parties. The cases against Turkey have concerned the destruction of homes, extrajudicial killings, disappearances and torture occurring in south-east Turkey. Other more recent examples of fact-finding missions include the inter-state case of Cyprus v Turkey (Nos. 25781/94) 10/5/01 (missing persons, etc.), Valasiei v Lithuania (No. 44558/98) 24/7/01 (prison conditions) and Bilanovski v Ukraine (No. 38812/97) 29/04/03 (treatment of prisoners on death row). In March 2003 a delegation of four judges took evidence from 43 witnesses in Chișinău and Tiraspol, Moldova, in the case of Ilieșcu & Others v Moldova & Russia (No. 48787/99) GC 8/7/04, in which the Moldovan applicants complained of their continuing unlawful detention in the Russian-occupied area of Transdnestraria.

Despite its potentially crucial role for
applicants in obtaining redress from the ECHR system, this procedure is undoubtedly expensive and time-consuming. A significant number of these missions can take up to a week and involve at least five or six ECHR officials (usually three judges, a registrar and lawyers) and interpreters. In addition, some of the ECHR judges consider that evidence taken five to seven years after the events in question (the time period that a case might take to reach Strasbourg) is likely to be unreliable. However, other judges believe that the fact-finding procedures of the ECHR could serve as an important check on efforts to conceal or distort the record on human rights. 3

It should be noted that whilst states are obliged to cooperate fully with the ECHR in the conduct of its fact-finding investigations this does not always happen in reality. For example, in Shmityoyev & Others v Georgia & Russia (No. 36378/02) 12/4/05, the ECHR’s delegation was refused access to five allegedly detained/extradited applicants who were being held in Russia within the jurisdiction of the Stavropol Regional


5 Shmityoyev & Others v Georgia & Russia (No. 36378/02) 12/4/05. See also European Court of Human Rights Press Release, 2,760 applications received by the Court from South Ossetia against Georgia, 10 October 2008.


7 Talas A.J. (No. 48782/99) GC M7/04.