Protocol 14 – the reform of the ECHR

Protocol 14
The reform of the European Court of Human Rights

Since its creation 51 years ago, the European Court of Human Rights (ECHR) has protected human rights acrosss the continent by interpreting and applying in its judgments the European Convention on Human Rights and Fundamental Freedoms.

Today it protects the rights of 800 million people in 47 states. The accession of new states to the Convention after the fall of the Berlin wall in 1989 and a wider awareness of the role of the Court in all Europe have caused a spectacular increase of the applications filed every year. This has put the effectiveness and the future of the Court at risk.

The number of pending applications before the Court has constantly grown. Whereas in 1999 8,400 applications were allocated to a judge committee or chamber, this figure rose to 27,200 in 2003, when around 65,000 applications were already pending. In 2009 57,200 applications were allocated to a judicial formation and the backlog reached 119,300 applications.

The Court's excessive workload is due to two factors in particular:

- The processing of a great number of applications that are declared inadmissible (more than 90% on which a decision is made)
- applications related to structural issues in which the Court has already delivered judgments finding a violation of the Convention and where a well established case law exists. These applications, called repetitive cases, account for around 60% of the judgments of the Court every year.

The Council of Europe has searched for solutions to these problems along the years. In 1998 a major step was taken to deal with the growing number of applications: a permanent Court was set up in Strasbourg. This reform also aimed at simplifying the system, reducing the length of proceedings and making them entirely judicial.

However, the prospect of a continuing increase in the workload of the Court soon led to the conclusion that a reform of the Court was necessary if the system was to be preserved. States agreed that any reform should not affect the unique features of the system: the judicial character of the process and the right of individual application.

In May 2004 the Council of Europe Committee of Ministers adopted Protocol No. 14 to the European Convention on Human Rights and Fundamental Freedoms. Its aim is to improve the efficiency of the Court and to reduce its workload as well as that of the Committee of Ministers of the Council of Europe, which supervises the execution of the judgments. The ultimate aim is to enable the Court to concentrate on those cases that raise important human rights issues.

In 2009, considering that the delay in the entry into force of Protocol No. 14 required urgent provisional measures to reduce the backlog of the Court, the Council of Europe Committee of Ministers' meeting held in Madrid adopted

Protocol No. 14*bis* to the European Convention on Human Rights, along with an agreement on provisional application of certain provisions of Protocol No. 14 dealing with the competences of single judges and three judge committees.

Protocol No. 14 will finally enter into force on 1 June 2010, three months after its ratification by Russia, the last state to ratify it.

What are the main changes introduced by Protocol 14?

It introduces changes in three main areas:

- reinforcement of the Court´s filtering capacity to deal with clearly inadmissible applications
- a new admissibility criterion concerning cases in which the applicant has not suffered a significant disadvantage
- measures for dealing more efficiently with repetitive cases

The key amendments to the Convention are the following:

Election of judges: Judges will be elected for a non renewable term of office of nine years. In the current system judges are elected for a term of six years that may be renewed for another six. The aim of the reform is to increase their independence and impartiality. The age limit remains at 70.

Competences of single judges: A single judge will be able to reject plainly inadmissible applications, those "where a decision can be taken without further consideration". This decision will be final. Prior to the entry into force of Protocol No. 14, this requires a decision by a committee of three judges. In case of doubt as to the admissibility, the single judge will refer the application to a committee of judges or a chamber. When acting as a single judge, a judge shall not examine any applications against the state in respect of which he or she was elected.

Competences of three judge committees: A three judge committee will be able to declare applications admissible and decide on their merits in clearly well-founded cases and those in which there is a well-established case law. Currently three judges committees can only declare applications inadmissible by unanimity but not decide on the merits. These cases are handled by chambers of seven judges or the Grand Chamber (17 judges).

In contrast with the previous situation, even when a three judge committee decides on the merits of an application, the judges elected in respect of the state concerned by the application will not be compulsorily members of the committee. A committee may invite this judge to replace one of its members, only for specific reasons, for example, when the application is related to the exhaustion of national legal remedies.

Decisions on admissibility and merits: In order to allow the registry and the judges to process cases faster, the decisions on admissibility and merits of individual applications will be taken jointly. This has already become the common practice of the Court. However the Court may always decide to take separate decisions on particular applications. This does not apply for interstate applications.

New admissibility criterion: The protocol creates an additional tool to allow the Court to concentrate on cases which raise important human rights issues. It empowers it to declare inadmissible applications where the applicant has not suffered a significant disadvantage and which, in terms of respect for human rights, do not require an examination of the merits by the Court or do not raise serious questions affecting the application or the interpretation of the Convention or important questions concerning national law.

Commissioner for Human Rights: The Commissioner will have the right to intervene as a third party, by submitting written comments and taking part in hearings. So far, it was possible for the president of the Court to invite the Commissioner to intervene in pending cases.

Friendly settlements: In order to reduce the Court´s workload, Protocol 14 encourages friendly settlements at an early stage of the proceedings, in particular for repetitive cases. It also provides for the supervision of the execution of the decisions on these settlements by the Committee of Ministers.

Execution of judgments: The Protocol empowers the Committee of Ministers to ask the Court to interpret a final judgment if it encounters difficulties to do it when supervising its execution. In order not to over-burden the Court, if there are disagreements in the Committee with regard to the interpretation of a judgment, a decision can be taken by a qualified majority.

Considering the importance of rapid execution of judgments, in particular in cases concerning structural problems, in order to prevent repetitive applications, the Protocol will allow the Committee of Ministers to decide, in exceptional circumstances and with a 2/3 majority, to initiate proceedings of non compliance in the Grand Chamber of the Court in order to make the state concerned execute the Court´s initial judgment. These proceedings before the Court would result in another judgment related to the lack of an effective execution.

Accession by European Union: Article 17 of the Protocol contains the possibility of the European Union becoming a party to the Convention. The Lisbon Treaty, which entered into force in December 2009, states that the European Union shall access the Convention. To provide for this accession the Convention will have to be further modified. The accession of the EU would be a major step towards creating a European fundamental rights area. Link to Fact Sheet on EU accession

Will Protocol 14 apply to the applications pending before the Court?

Upon entry into force its provisions can be applied immediately to all pending applications. The only exception refers to the new admissibility criterion which shall not apply to applications declared admissible before its entry into force. In the two years following the entry into force, this criterion can only be applied by the Chambers and the Grand Chamber.

What will happen to Protocol No. 14 bis and to the Madrid Agreement when Protocol No. 14 is in force?

Protocol No. 14bis and the Madrid Agreement aimed at increasing the Court´s short-term capacity to process applications, by allowing, pending entry into force of Protocol No. 14, the immediate application of two provisions contained in it: those that allow a single judge to reject plainly inadmissible applications, and a three judge committee to declare applications admissible and decide on their merits in repetitive cases. Protocol No. 14bis and the Madrid Agreement were exclusively applicable to applications lodged against the states that expressed their consent to these procedures.

Protocol 14bis and the Madrid Agreement shall cease to be in force or applied from the date of entry into force of Protocol 14. It will have no practical effect on the work of the Court, because the provisions of Protocol 14bis and of the Madrid Agreement are contained in Protocol 14.

Will Protocol 14 solve the case load of the Court?

It will significantly improve the efficiency of the Court, but it will not solve its backlog of applications. Further reform of the Convention system is necessary.

In 2006, a Group of Wise Persons, composed of eminent jurists, presented a number of proposals to the Committee of Ministers. The Group recommended, among other things, creating a new judicial filtering mechanism and a statute concerning certain organisational elements of the Court's functioning, which could thus be amended more flexibly than the international treaty process required for the Convention.

What will be the next steps for further reform of the Court?

A Ministerial Conference on the future of the European Court of Human Rights was held in February 2010 in Interlaken (Switzerland). The representatives of the 47 member states issued a joint declaration which contained an Action Plan containing short and middle-term measures as well as an agenda for their implementation.

Some proposals are related to the filtering proceedings of applications, the supervision of execution of judgements or the implementation of the Convention at the national level. In the latter case, for example, states parties are called to inform the Committee of Ministers before the end of 2011 of the measures taken.

The Committee of Ministers should evaluate, during the years 2012 to 2015, to what extent the implementation of Protocol No. 14 and of the Interlaken Action Plan has improved the situation of the Court. Before the end of 2019, the Committee should decide whether more profound changes are necessary.

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