



In partnership with Memorial Human Rights Centre (MHRC), the Georgian Young Lawyers' Association (GYLA) and Article 42 of the Constitution

The practical implications of Protocol 14 to the ECHR

Alice Pillar, Intern, EHRAC

Protocol 14 to the ECHR was adopted by the Committee of Ministers (CoM) of the Council of Europe (CoE) and opened for signature on 12 May 2004. On 15 January 2010, the Russian Federation was the last of the 47 Parties to the ECHR to ratify the Protocol, which came into force on 1 May 2010.

The main purpose of the Protocol is to improve the functioning of the ECtHR, which is currently overburdened by the number of individual applications, by giving it the procedural means and flexibility it needs to process all applications in a timely fashion and at the same time allowing it to concentrate on the most important cases. In particular, the Protocol addresses the following issues: the process for examining applications, a new criterion for admissibility, friendly settlements and the supervisory procedure for the execution of judgments.

The filtering process

The Protocol introduces a new 'filtering mechanism' for applications to the ECtHR. This takes the form of a new single-judge formation which, with the assistance of a non-judicial rapporteur, has the power to strike out an application or to declare it inadmissible where there is no need for further examination.¹ Previously, this power was reserved to a Committee of three judges where the decision could be taken unanimously and without the need for further examination by a Chamber.

This was the fate of around 90% of all applications submitted to the ECtHR. It is hoped, therefore, that the new single-judge formation will increase the ease and speed with which the ECtHR deals with a large proportion of the applications it receives. As remains the case for Committee decisions, the decision of the single judge as to admissibility is final. However, a single judge cannot declare an application inadmissible against the state in respect of which that judge has been elected.

Repetitive cases

Repetitive cases account for a significant proportion of the ECtHR's caseload. Therefore, in cases concerning matters for which there is well-established case law,² Protocol 14 empowers a Committee of three judges to make a unanimous decision on admissibility and merits simultaneously. Previously, Art. 29(3) provided for the simultaneous examination of admissibility and merits in exceptional cases only. This position is preserved for decisions on inter-state applications under Art. 33, however Protocol 14 makes simultaneous rulings the norm rather than the exception. Nonetheless, a Committee can choose not to follow the simplified procedure if a case requires more detailed examination by a Chamber.

It is noteworthy that all decisions made by a Committee are final and, unlike Chamber rulings, cannot be referred to the Grand Chamber. Consequently, it will not be possible to refer simultaneous rulings on admissibility and merits by a

Committee to the Grand Chamber. Previously, in contrast, a request could be made to refer any judgment on the merits. This change is logical however, as the Committee is only empowered to rule unanimously on cases for which there is well-established case law. Parties may, of course, contest the 'well-established' nature of case law before the Committee. The Grand Chamber will continue to deal with individual applications forwarded by a Chamber and with requests for referral by Parties in exceptional circumstances under Art. 43.

Friendly settlements

Protocol 14 strengthens the role of friendly settlements; it is particularly hoped that they will be used in repetitive cases. Firstly, it gathers the provisions relating to friendly settlements into one Article, Art. 39. The new Art. 39 provides that the ECtHR may now place itself at the disposal of Parties for friendly settlement at any stage in proceedings. Art. 39 further provides that decisions on friendly settlements will be transmitted to the CoM, which will supervise the execution of the terms as set out in the decision.³

Admissibility criteria

Protocol 14 introduces a new admissibility criterion: the ECtHR shall declare an application inadmissible if it considers that the applicant has not suffered a significant disadvantage. This criterion also contains two safeguard provisions: it can only be applied where, firstly, the principle of respect for human rights does not require an

examination on the merits, and, secondly, where the case has been duly considered by a domestic tribunal.

The general aim of the admissibility criteria is to reduce the time spent by the ECtHR on clearly inadmissible applications. The purpose of the new criterion should be understood in conjunction with these other criteria as being to enable the ECtHR to focus on those cases that raise important human rights issues. The wording of the new criterion leaves much to the ECtHR's discretion. This appears to be an intentional response to the perceived inflexibility of the original criteria, which have been fully defined in previous case law. To allow the development of appropriate case law for the application of this new criterion, an interim provision dictates that it may only be applied by a Chamber or by the Grand Chamber for the first two years following the entry into force of the Protocol.⁴

Execution of judgments

Protocol 14 seeks to strengthen the powers of the CoM to supervise the execution

of judgments. The Protocol introduces the right of the CoM, in cases where it considers that its supervision is hindered by a problem of interpretation of the judgment, to refer the matter by a two-thirds majority⁵ to the ECtHR for a ruling on the question of interpretation. Additionally, where the CoM considers that a Party is refusing to abide by a final judgment, it may, after serving formal notice on that Party and by a two-thirds majority decision, refer the matter to the ECtHR. If the ECtHR finds a violation of the Party's obligation to abide by the judgment under Art. 46(1), the case will be referred back to the CoM for consideration of the measures to be taken. The Protocol does not provide for the payment of a financial penalty, however. Such referrals will only be made in exceptional circumstances, and the provision does not mean that it will be possible to re-examine the initial finding of a violation.

In addition to the main implications detailed above, Protocol 14 seeks to reinforce judges' independence by increasing

their term of office from six to nine years and prohibiting their re-election. It also expressly provides for the right of the Commissioner for Human Rights to intervene in proceedings as a third party.

1 This means clear-cut cases where the inadmissibility of the application is manifest from the outset.

2 Normally case law which has been consistently applied by a Chamber. Exceptionally, however, it is conceivable that a single judgment on a question of principle may constitute 'well-established case law', particularly when rendered by the Grand Chamber.

3 Previously, the CoM only supervised 'judgments' and, consequently, the ECtHR largely endorsed friendly settlements through 'judgments', rather than 'decisions'. The new provision recognises that a 'decision' has fewer negative connotations for the Parties and may, therefore, increase the chance of a friendly settlement being reached.

4 The 'well-established case law' requirement for admissibility rulings by single judges and simultaneous admissibility and merits rulings by Committees is the primary motivation for this interim provision.

5 The requirement of a qualified majority vote indicates that the CoM should use this possibility sparingly.