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Reform of the European Court of Human Rights

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On 18–19 February 2010 there was held a Ministerial Conference on the future of the European Court of Human Rights. The conference adopted a political declaration with an Action Plan which sets out a desirable course of reforms and an agenda for their implementation and for the oversight of their application. The Action Plan and Additional Protocol 14, which is due to come into force in June 2010, set the framework for the evolution of the European human rights protection system in the next decade.

Introduction. The Convention of the Council of Europe (CoE) for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 (it entered into force in 1953) constitutes the foundation underpinning the regional European human rights protection system. Its architects sought to establish in Europe a collective system of human rights protection guaranteed by norms enshrined in treaties. The Convention with the Protocols thereto has ensured the fundamental political and civil rights and it has been a constitutive element of public order in the European continent.

Three institutions were established to secure the observance of the engagements undertaken by the Party States to the Convention: the European Commission of Human Rights, the Court of Human Rights (its current format resulting from Protocol No 11 of 1994), and the Committee of Ministers. The Court is the permanent adjudicative body which applies the provisions of the Convention and before which applications for violations of the Convention may be brought by states, individuals, groups of individuals, and organizations. The Court being a treaty-established body, it has jurisdiction only of matters of interpretation and application of the Convention.

Since the entry into force of the Convention fourteen additional Protocols have been adopted. They modify the system of protection, enlarge the catalogue of guaranteed rights and freedoms, vest the Court with the right to give advisory opinions, enable individual petitions to be brought before the Court, reform the mechanism of supervision of the observance of commitments assumed under the Convention, and deal with the matters relating to organizational and procedural issues.

Reform of the Court. The reform process of the Court is naturally connected with the evolution of the system of human rights protection guaranteed by the Convention. Changes have been introduced by the Party States by means of additional protocols. Two kinds of interdependent factors have been at work in influencing the reform: the will of the States and factual challenges emerging in the course of performance by the Court of its functions. The extension of the catalogue of protected rights, the accession to the Convention of new States and the recognition of the right of individual petition have necessitated amendments to the provisions on the proceedings before the Convention bodies. With the number of cases rising steadily since the 1980s it has been increasingly difficult to maintain reasonable length of the proceeding. This problem became even more acute following Central- and East European states' accession to the Council of Europe after 1990. In 1993 (the Vienna Conference) the decision was taken to reform and simplify the Convention's supervisory mechanism. A year later a single European Court of Human Rights was established, the European Commission of Human Rights was dissolved and the Committee of Ministers was divested of its erstwhile judicial functions. These changes came into force in 1998 as Additional Protocol No 11. However, since 2000 new modifications have been contemplated (the Rome Conference) to address the problem of an avalanche increase in the number of cases and markedly prolonged waiting times for adjudication.

While in 2001 some 14 thousand applications had been brought before the Court, in 2005 there were 63 thousand complaints pending and the backlog swelled to over 100 thousand early in 2010.

The problems of the system's case processing capacity and efficiency being more and more manifest, the Committee of Ministers resolved to appoint an evaluation group. That body recommended equipping the Court with a filtering mechanism—the right to refuse to examine a certain category of petitions. In 2004 Additional Protocol No 14 was adopted. It includes a group of provisions which rationalize the procedure and put in place a process of preliminary screening of petitions. An obviously inadmissible application may be dismissed by a decision of a single-judge chamber repetitive applications are processed by committees of three judges rather than by seven-judge chambers; under a new additional criterion of admissibility applications are to be dismissed where the applicant "has not suffered a significant disadvantage." A committee may unanimously declare an application inadmissible, or strike it out of the Court's list of cases—or it may declare the application admissible and render a judgment if the underlying question in the case concerning the interpretation or the application of the Convention or the Protocols thereto is already the subject of case-law of the Court. New additional criteria of inadmissibility were introduced: inadmissible is an application which is manifestly ill-founded, constitutes an abuse of the right of individual application, and when the applicant has not suffered a significant disadvantage.

Yet this reform was stalled for six years due to non-ratification of Protocol No 14 by Russia. Russia criticized decisions and judgments rendered against it. Officially, it refrained from the ratification on the grounds of incompatibility of certain provisions of the Protocol with Russian law and made the revision of its position conditional upon an assurance that its representative would take part in the processing of cases concerning Russia, but it is to be supposed that this decision had been prompted by the commencement before the Court of an action brought by Yukos. Eventually, the Russian ratification instrument was delivered on 18 February 2010 and the Protocol will come into force on 1 June 2010.

Interlaken Declaration. The coming into force of Protocol No 14 will not end the reform process. Under Article 6 of the Treaty of Lisbon the EU will be free to join the Convention. This will bring about a change in the architecture of the European institutions for the protection of human rights, because the European Union law will also become come under oversight. The new system for the screening of petitions will need to be reviewed for the correctness of its application. At the initiative of Switzerland a conference was summoned to consider the reform of the Court in the long-term perspective. The conference was held on 18–10 February 2010 and it ended in the adoption of a political declaration on future reforms of the Court.

The declaration includes an Action Plan with political guidelines on the further reform of the Convention system. The Party States agreed that the right to individual petition had to be preserved as the cornerstone of the complaint system, subject to the principle of subsidiarity. Under this principle, it is for the Parties to the Convention to play the main role in ensuring the protection of human rights. Moreover, the declaration notes that measures must be taken urgently to achieve a balance between the number of incoming applications and the number of judgments and decisions delivered by the Court, to reduce the Court's backlog of cases and to ensure the effective execution of the Court's judgments. It emphasizes the need for a thorough analysis of the Court's practice in respect of applications declared inadmissible. It points out the State's duty to implement in full the Court's decisions so as to prevent similar violations in the future. It recognizes that the States should take into account the Court's developing case-law so as to draw conclusions from judgments finding a violation of the Convention by another State.

The Committee of Ministers was called upon to consider the introduction, by means of an amending protocol, of a simplified procedure to enable the amendment of Convention provisions relating to organizational issues. In 2011–2015 the Committee should evaluate to what extent the implementation of Protocol No 14 and of the Interlaken Action Plan has improved the situation of the Court. On this basis the Committee of Ministers will decide, before the end of 2019, on further reforms.

Conclusions for Poland. Important as the issues addressed by Poland during the conference are—such as the adoption at the national level of effective appeal measures, or the provision of information for the applicants, in particular through CoE Information Offices (a "Warsaw pilot project")—it is ensuring that the Convention-guaranteed rights are duly protected at the national level (so as to reduce the number of applications and the Court's workload) and that the Court's judgments are properly implemented that must be recognized as the paramount challenges ahead. Years immediately ahead will show whether Protocol No 14 has fulfilled the hopes pinned on it and whether the filtration of applications is not performed to the prejudice of the individual applicant.