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TRAINING MANUEL ON HUMAN RIGHTS AND HUMAN RIGHTS PROTECTION FOR LAWYERS

FILE N° 7 : THE EUROPEAN SYSTEM FOR THE PROTECTION OF HUMAN RIGHTS WITHIN THE FRAMEWORK OF THE COUNCIL OF EUROPE

The Council of Europe – an international organisation created on 5 May 1949 by 10 States, and which now has 47 – entrusted itself with the task, on the European continent, of setting up a common democratic and legal area, while ensuring the respect of human rights, democracy and the pre-eminence of law.

In this perspective, a European Convention on Human Rights was signed in 1950 (which became effective in 1953).¹

The purpose of this text is to recognise the fundamental civil and political rights and freedoms of the individual, and to protect them through the setting up of a control mechanism for the application of the Convention of a jurisdictional type, by establishing a European Court of Human Rights.

The Convention has been amended by 14 Additional Protocols, which deal with guaranteed rights and procedure.

➤ ***What are the rights guaranteed by the European Convention of Human Rights ?***

The Convention guarantees in particular the right to life (art. 2), the right to a fair trial (art. 6), the right to respect for private life and family life, freedom of expression, thought, conscience and religion, and the right to respect for property.

It prohibits in particular torture and degrading or inhuman treatment and punishment (art. 3), slavery and forced labour (art. 4 §1), arbitrary and illegal detention and discrimination in the enjoyment of the rights and freedoms recognised by the Convention.

¹ All members of the Council of Europe have ratified the Convention: Albania, Germany, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia Herzegovina, Bulgaria, Cyprus, Croatia, Denmark, Spain, Estonia, Finland, France, Georgia, Greece, Hungary, Ireland, Iceland, Italy, ex-Yugoslav Republic of Macedonia, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Monaco, Montenegro, Norway, the Netherlands, Poland, Portugal, Czech Republic, Romania, United Kingdom, Russia, San Marino, Serbia, Slovakia, Slovenia, Sweden, Switzerland Turkey and Ukraine.



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The Convention recognises certain rights as intangible. This extends to rights which admit no exceptions (art. 15 §2) : the right to life (art. 2), the prohibition of torture and degrading or inhuman punishment and treatment (art. 3), slavery and forced labour (art. 4 §1), and the principle of legality of offences and penalties (art. 7).

➤ **What is the legal effect of the European Convention of Human Rights in national law ?**

The Convention has direct applicability and may therefore be invoked by individuals before national courts.

According to the case-law of the Court, the Convention has primacy over all other acts of national law, including constitutional texts and international treaties.

➤ **What is the composition of the Court ?**

The Court is composed of as many judges as States Parties, which currently number 47.

They are elected for 6 years by the Parliamentary Assembly of the Council of Europe from a list of 3 candidates submitted by each State Party.

They sit individually and do not represent any State. However, they are required to sit with regard to matters which concern the state on whose behalf they have been elected.

The Court is divided into 5 sections. Each section comprises :

- A Committee of 3 judges, who rule on the admissibility of applications,
- A Chamber of 7 judges, who rule on the admissibility and the merits of applications which have not been declared as inadmissible.

The Court sits in a Grand Chamber, composed of 17 judges (including the President and the two Vice-Presidents of the Court, the Section Presidents, and the Judge elected on behalf of the State in question are automatic members) within the framework of referral procedures (when an application declared inadmissible is referred back by the Chamber. It also re-examines cases which have already been judged (art. 43), and rules on requests for advisory opinions (art. 47).

➤ **In which cases does the Court have jurisdiction and who may refer a case before the Court ?**

The Court has jurisdiction to examine :

- Inter-State applications : when a State commits a breach of the Convention. These applications are few in number.
- Individual applications: when an individual is the victim of a violation of a right guaranteed by a State Party. This right is recognised for physical and legal persons (non-governmental organisation, group of individuals). The right of individual recourse became mandatory for States, with the entry into force of Protocol n° 11 of 1998.
The competence of the Court has a subsidiary character with regard to the jurisdiction of national courts.
- Requests for advisory opinions: since Protocol n° 2 of 1970, the Court may, at the request of the Committee of Ministers, deliver advisory opinions in legal matters concerning the interpretation of the Convention and its Protocols.

➤ **What are the conditions for admissibility of an individual application ?**

- **The applicant must have been the victim of a violation by a State of a right guaranteed in the Convention:**

- Act or omission,
- from a public authority,
- committed on the territory of a State Party,
- directly affecting the applicant.

Remarks :

- *Indirect victims may benefit from the right of individual recourse under the following conditions :*

- Existence of a direct, effective and potential victim of a violation by a State of a right guaranteed in the Convention ;
- More personal close link between the direct victim and the indirect victim ;
- The violation has caused the indirect victim harm or said victim has a personal interest in the violation ceasing.

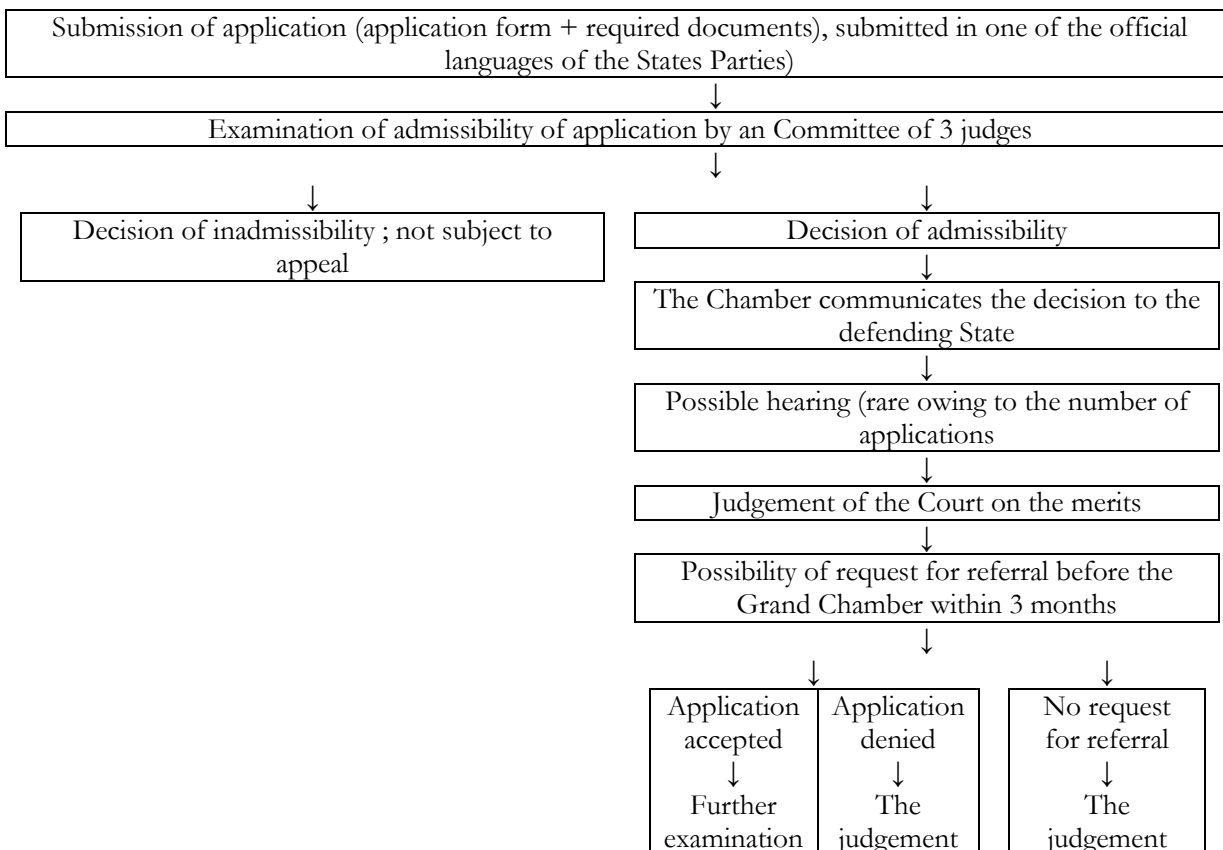
- *Event of death of the applicant :* the heirs may continue with the proceedings if the grievance is transmissible and if they have an interest in having said violation established (ECHT, 13 Nov. 2003, *Örs versus Turkey*).

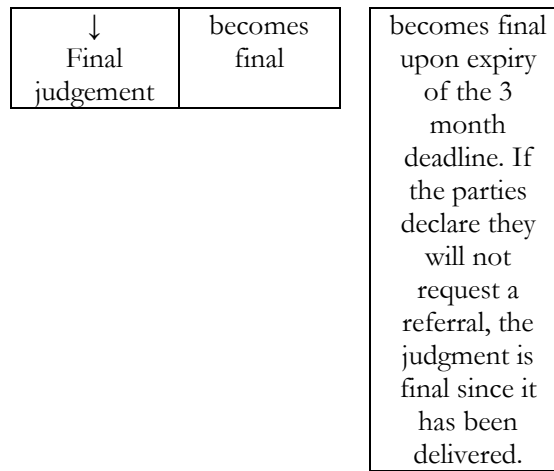
- **The applicant must have exhausted all remedies at national level (art. 35)**

The applicant must have exhausted all necessary remedies at national level, i.e. the most effective and swiftest remedy. This condition does not apply to aleatory, ineffective or inadequate remedies at national level, nor in circumstances which are in particular due to incompetence on the part of local authorities.

The burden of proof for exhaustion of remedy lies with the applicant.

➤ ***What is the procedure for the admissibility and examination of individual applications?***





The procedure is public and in the presence of both parties.

The applicant may ask for the adoption of protective measures (art. 39 of the Rules of the Court) and reparations for damages sustained (art. 5§5 of the Convention, as part of the right to liberty and security).

On average, more than 90 % of individual applications are declared inadmissible. Since the Court became operational, the Court has delivered more than 10 000 judgements.

➤ **What are the distinctive features of procedures ?**

- **Third party intervention**

The President of the Court may, in the interests of the proper administration of justice, invite or authorise any contracting State which is not a party to the procedure, or any other person concerned other than the applicant, to submit written observations, or take part in the hearing (art. 36 of the Convention).

- **On-site investigations**

The Court may carry out on-site investigations.

- **Friendly settlement**

Applications which are declared as admissible by the Court may be settled amicably (art. 39 of the Convention, as amended by Protocol 14).

- **Pilot judgement procedure**

When the Court receives a significant number of applications deriving from the same root cause, it may decide to select one or more of them for priority treatment. In dealing with the selected case or cases, it will seek to achieve a solution that extends beyond the particular case or cases so as to cover all similar cases raising the same issue.

The resulting judgment will be a pilot judgment (for instance, ECHR, *Scordino v/ Italy*).

➤ **What authority do the judgments of the Court have ?**

By virtue of article 46 of the Convention, the final judgements of the Court have legally binding effect.

The Committee of Ministers of the Council of Europe has responsibility for ensuring the enforcement of judgements by States Party to the dispute.

Useful documents:

Application pack for applicants wishing to apply to the Court :

<http://www.echr.coe.int/ECHR/EN/Header/Applicants/Apply+to+the+Court/Application+pack/>

Key points of case-law of the Court relating to conditions for admissibility :

<http://www.echr.coe.int/ECHR/EN/Header/Case-Law/Case-law+information/Key+case-law+issues/>

Sources :

- European Convention on Human Rights of 1950.
- Web site of the Council of Europe : <http://www.coe.int/>
- Web site of the European Court of Human Rights : <http://www.echr.coe.int>
- Jean-Luc SAURON, *Le système de la Convention européenne des droits de l'homme*, Gualino éditeur, Lextenso éditions, Paris, 2008.
- Natalie FRICERO, *Droit européen des droits de l'Homme*. Mémentos LMD, Gualino éditeur, 2007.

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