

ASSESSMENTS ON THE EUROPEAN COURT OF HUMAN RIGHTS

Raluca-Viorica, Lixandru 1

Abstract

The European Court of Human Rights represents a body with jurisdiction attributes over human rights and functions within the Council of Europe. It is made up of judges, equal in number to that of the members of the Council of Europe, each state being able to have only one representative. The European Court of Human Rights, often informally referred to as the "Strasbourg Court," was created to systemize the procedure for human rights complaints from the member states of the Council of Europe.

The Court's mission is to ensure the compliance with the provisions of the European Convention on Human Rights and the additional protocols by the signatory states.

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Regional bodies and organisations hold special importance in the evolution of human rights issues. Thus, at European level we distinguish: the Council of Europe and the Conference for security and cooperation in Europe.

a) The Council of Europe

On May 5th, 1949, the representatives of ten European states (Belgium, Denmark, France, Ireland, Italy, Luxembourg, the Netherlands, the United Kingdom, Norway and Sweden) signed the Statute of the Council of Europe in London (The main international human rights instruments to which Romania is part, vol. II, Regional Instruments, Romanian Institute for Human Rights, Bucharest, 2007). In its preamble it is mentioned that the aim of the Council of Europe is to achieve greater unity among its members in order to safeguard and accomplish the ideals and principles that are their common heritage and to facilitate their economic and social progress. Furthermore, another main objective is also the creation of a system of human rights protection. The main sources of this body are the Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter (Scăunaş, 2003).

The observance of the human rights in Europe has long been the concern of the Council of Europe, and the willingness to defend and promote freedom and democracy is the dominant note of the status of the Council of Europe (Sudre, 2006).

The conditions to be met by the European states that acknowledge the Statute and which are members of the Council of Europe are the following:

- accept the principles of the rule of law;
- accept the principle by virtue of which every person under its jurisdiction must benefit from the fundamental rights and freedoms of the human being;
- undertake to collaborate, sincerely and effectively, in achieving the purpose of the organization.

Human rights, democracy and the rule of law are the essential values of the Council of Europe, grouping the European states with a similar conception regarding these social values.

Within the Council of Europe, there is a number of independent subsidiary bodies with human rights concerns, such as the European Commission on Human Rights and the European Court of Human Rights.

The Council of Europe provides the most effective mechanism for the protection and promotion of human rights through the European Court of Human Rights, but also by

¹ PhD Lecturer, Constantin Brâncoveanu University, Piteşti.

identifying new threats to human rights and human dignity, promoting education and training in the field of human rights (Zlătescu, 2008).

Until May 10, 1994, when Protocol no. 11 was adopted at the European Convention on Human Rights, the *European Commission on Human Rights* was at the top of the mechanism created by the Council of Europe for the protection of human rights (Bîrsan, 1998).

The Commission, based in Strasbourg, is made up of representatives of the member states of the Council of Europe, which have ratified the European Convention on Human Rights in 1950.

The European Commission for Human Rights is elected by the Committee of Ministers from a list of candidates drawn up by the Bureau of the Consultative Assembly, whose term of office is of 6 years.

The High Contracting Parties, through their representatives, present three candidates in the Consultative Assembly, out of which at least two will have the nationality of the respective state. The term of office for the members of the Commission is of 6 years, with the possibility of being re-elected. The members of the Commission cannot perform functions incompatible with the requirements of independence, impartiality and availability during the term of office.

With regard to the powers of the Commission, it can be notified by an application by any natural person, any non-governmental organization or any group of persons who consider that they have been victims of a violation by a State party of the rights defended by the European Convention on the human rights.

The Commission shall rule on the inadmissibility of the requests made by individuals. Thus, according to article no. 26 of the European Convention on Human Rights, "The Commission can only be notified after the exhaustion of the domestic remedies, as established in accordance with the principles of generally recognized international law and within a period of 6 months, starting with the date of the final internal decision."

The preliminary examination of the application can be completed in the following ways (Purda, 2001):

- The Commission detains the request;
- The Commission will not withhold the request if it is anonymous;
- The Commission declares the application inadmissible, if it was considered incompatible with the provisions of the Convention, manifestly unfounded or abusive;
- The Commission rejects the application as inadmissible on the ground that it is premature.

The Commission's solutions can be:

- solving the case through a good understanding;
- dismiss the application as inadmissible;
- the request is dismissed;
- ascertains the facts and determines whether they prove a breach by the State concerned of its obligations under the provisions of the Convention.

If a case withheld for examination is not resolved by good understanding, it is not rejected as inadmissible and it is not dismissed. The Commission then draws up a report in which it ascertains the facts and issues an opinion in order to establish whether the facts ascertained proved, on the part of the State concerned, a breach of the obligations under the provisions of the Convention.

The report shall be transmitted to the Committee of Ministers and communicated to the interested states, as well as to the applicant, if the application has been submitted by a private individual. The Commission may formulate, by transmitting the report of the Committee of Ministers, the proposals it considers necessary. Within 3 months from the submission of the

Commission's report, the dispute may be referred to the European Court of Human Rights, provided that the State concerned in the application has accepted the compulsory jurisdiction of this international court.

If, within 3 months from the submission of the Commission's report to the Committee of Ministers, the case is not referred to the Court, the Committee of Ministers, through a vote by a two-thirds majority of the representatives having the right to join the Committee, takes a decision on whether or not the Convention has been violated.

The European Court of Human Rights represents a body with jurisdiction attributes over human rights and functions within the Council of Europe. It is made up of judges, equal in number to that of the members of the Council of Europe, each state being able to have only one representative. The Consultative Assembly shall elect the members of the Court. They must enjoy the highest moral consideration and must meet the conditions required for the exercise of the high judicial functions or be lawyers of recognized reputation. It is the only genuine legal body created by the European Convention on Human Rights.

The European Court of Human Rights, often informally referred to as the "Strasbourg Court," was created to systemize the procedure for human rights complaints from the member states of the Council of Europe.

The Court's mission is to ensure the compliance with the provisions of the European Convention on Human Rights and the additional protocols by the signatory states. The system of protection of fundamental rights and freedoms introduced by the European Convention on Human Rights is based on the principle of subsidiarity. The Court intervenes only when the states have failed to comply with their obligations. The control exercised in Strasbourg is mainly activated through individual applications, through which the Court can be referred by any person, natural or legal, under the jurisdiction of the States Parties to the Convention.

The European Convention establishes a mechanism for controlling the enforcement of the Court judgments. The European Court of Human Rights is an important element of European cooperation and integration. The evolutionary interpretation of the Convention by the Court and the effective supervision of the execution of its judgments and, of course, the adoption of all necessary measures, both legislative and other, in order to remedy the found violations of the fundamental human rights, lead to a constant improvement of the legal and judicial system in the Member States (Zlătescu, 2008).

The jurisprudence of the European Court of Human Rights has repeatedly shown that respecting the rights stipulated in the European Convention on Human Rights imposes on the states the obligation to take positive measures (Mowbray, 2004) from an economic and social point of view.

The procedural subsidiarity finds its primary role in observing the human rights, and the remedy of the situation in case of their violation lies with the states. Only in case the state mechanisms were unsatisfactory do the international bodies intervene. This is what is called the principle of exhaustion of the internal remedies, that is to say, the compulsory completion of the internal remedies before the notification of an international body. Otherwise, the request will be rejected as inadmissible, being premature, but the procedure can be resumed after the exhaustion of the internal methods.

The main purpose of the European Court of Human Rights is not to punish the guilty states, but to respect the human rights, that is, to restore the violated rights and to repair the damages suffered by the victim.

The European Court of Human Rights has the role of a subsidiary international court (Beygo, 1995) for the exercise of domestic remedies.

The subsidiarity principle strengthens the protection of human rights nationwide, doubling it with a control system that operates as a safety net (Callewaert, 2000).

According to article 44 of the European Convention on Human Rights, only the States Parties and the Commission may appear before the Court.

In order for the Court to be invested, it is necessary that the Party States have recognized its jurisdiction as compulsory. Thus, according to article 46 any Party State may, at any time, declare that it recognizes as binding by law and without a special convention the jurisdiction of the Court on any matter concerning the interpretation and application of the Convention.

The Court has the possibility when a party has been harmed by a decision or measure, which is in total or partial opposition to the obligations arising from the European Convention on Human Rights, and domestic law does not allow for the complete removal of the consequences of the measures, to grant fair satisfaction to that party (Article 50 of the Convention).

b) Conference for security and cooperation in Europe

The Conference for Security and Cooperation in Europe, which opened on 3 July 1973 in Helsinki and continued in Geneva on 18 September 1973 until 21 July 1975 was signed in Helsinki on 1 August 1975.

The Helsinki Act of August 1, 1975 represents a code of good conduct for the East-West relations, dedicated to peace, security, justice and cooperation in Europe (Sudre, 2006). The final act upholds the general principle of respect for human rights and fundamental freedoms, including freedom of thought, conscience or religion.

The Conference for Security and Cooperation in Europe, was endowed, through the documents of Vienna from January 15, 1989, and Copenhagen of June 29, 1990, with a detailed catalogue of human rights, largely inspired by the universal texts and the ECHR, which grants special attention to religious freedom, the principles of justice, the right to free elections or the rights of national minorities (Sudre, 2006).

The Paris Charter (1990) asserts the protection of human rights, the first chapter being entitled “Human rights, democracy and the rule of law,” which is also the main objective of the Conference for security and cooperation in Europe.

Outside the European continent, we notice in America: the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights, and in Africa, the African Commission on Human and Peoples’ Rights.

a) *In America*

The American continent is a second example of “regionalization of human rights” within the Organization of American States and inter-American cooperation, giving rise to a sophisticated protection mechanism, largely inspired by the European system (Sudre, 2006).

The Charter of the Organization of American States was adopted in Bogota on April 30, 1948 (Sudre, 2006), during the 9th international conference.

This regional political organization has created a number of specific bodies on the legal protection of human rights, such as the Inter-American Commission for Human Rights and the Inter-American Court of Human Rights, “the institutional mechanism of protection reproduced after that of the ECHR” (Sudre, 2006).

1) *The Inter-American Commission for Human Rights*

The Inter-American Commission for Human Rights was established on the basis of the provisions of article 33 of the American Convention on Human Rights (American Convention on Human Rights of November 22, 1969).

It consists of 7 members, who must be people of high moral standing and recognized competence in the field of human rights. The General Assembly of the Organization of American States selects these members from a list proposed by the governments of the States Parties.

Article 41 of the Convention contains the main attributes of the Commission:

- it performs functions of protection of human rights consisting of individuals and states' right of appeal (Articles 44 and 45 of the Convention);
- it promotes human rights among the people of America;
- it prepares the studies and reports necessary for the performance of its functions;
- it makes recommendations to the governments of the Member States, when they deem it necessary, to adopt progressive human rights measures;
- it calls on the governments of the Member States to provide it with information on the measures taken in the field of human rights;
- it adopts the measures in respect of the petitions and other communications received;
- it submit annually a report to the General Assembly of the Organization of the American States;
- it provides the requested consultations on human rights issues to the Member States through the General Secretariat of the Organization of American States and provides the necessary opinions.

At the request of the Commission, the Party States undertake to provide information on how to apply the Convention in their national law.

The petitions sent to the Commission may come from:

- any person or group of persons, any legal government entity claiming to have suffered a violation of the rights provided for in the Convention;
- any State which has recognized the power of the Commission to receive and examine communications concerning the violation by another State of human rights stipulated in the Convention.

In order to be admitted, the communication must meet the following conditions:

- the internal ways of resolving the case have been used and exhausted;
- to be introduced within 6 months from the date when the injured party in his/her rights became aware of the final decision;
- the case is not being examined by another international court;
- indicate the name, nationality, profession, residence and be signed, in the case of a particular person or group of persons.

Except from the above provisions are the situations in which the national law of the respective state does not provide a procedure for the protection of the alleged right to have been violated or the person to have been denied access to the internal methods or to have been unable to use them, as well as the unjustified delay in taking the decision by the courts notified.

The settlement procedure, in case of receiving a notification by the Commission, invoking the violation of any right provided in the Convention is regulated in article 48-51 of the Convention.

Thus, if the communication is accepted, it will ask the applicant state's government for the necessary information, setting a reasonable deadline for each case. At the expiration of the fixed term, the merits of the reasons for the petition or communication will be examined, and in a negative case, the case will be classified.

In the event of the case being detained, the Commission will inform the parties and proceed to examine the complaint. The Commission will provide its good offices in order to reach amicable settlement in accordance with the regulations of the Convention. If the case is not resolved within the deadline set by the statute, the Commission will draw up a report containing its facts and conclusions.

2) The Inter-American Court of Human Rights

The Inter-American Court of Human Rights is made up of 7 judges, citizens of the member states of the Organization of American States, elected from among the lawyers with a high moral reputation and recognized competence in the field of human rights.

The Court can only be referred to the Commission or a party State. Only 21 Party States to the Convention have recognized the jurisdiction of the Court (Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Dominican Republic, Suriname, Uruguay, Venezuela). The Court took its first ruling on July 29, 1988 (Sudre, 2006). A cause can only be tried after having passed the stage before the Commission.

The Court may be consulted by Party States regarding the interpretation of the Convention or other treaty on the protection of human rights in the American States. The jurisdiction of the Court concerns all cases concerning the interpretation and application of the provisions of the Convention.

The judgment of the Court is final and without the right to appeal, and separate opinions can be expressed. In the case of contesting the decision, the Court shall rule within 18 days of its communication.

Annually, the Court presents the General Assembly of the O.S.A. a report on the activity, specifying the cases of non-observance of its decisions and recommendations.

b) In Africa

The African Commission for Human and Peoples' Rights was set up under the coordination of the Organization of the African States. In 1963, in Addis Ababa, the Charter of the Organization of African Unity was adopted, on the basis of which (Article 30 of the Charter) the African Commission on Human and Peoples' Rights was established. It is an independent technical body, made up of 11 members elected on the basis of personal qualities, charged with the promotion (documentation and transmission, research and consultation, etc.) and the protection of human rights, the Commission being able to be notified, for any non-compliance of a state with the conventional provisions, by another Party State or by individuals (Sudre, 2006).

In accordance with the provisions of the Charter, the Commission has the following powers:

- it elaborates studies, documentation and research; it organizes seminars, colloquiums, conferences; it issues opinions and makes recommendations to governments for the promotion of human rights and peoples;
- it cooperates with other African or international institutions whose objective is to promote human rights;
- it ensures the respect of human rights within the limits mentioned in the Charter;
- it elaborates the principles and rules regarding solving human rights issues by African states;
- the interpretation of any provision of the Charter at the request of a party State, an African organization recognized by the O.U.A or an institution of the O.U.A;
- it fulfils other tasks that may be entrusted to it by the Conference of Heads of State and Government.

The Commission's Rules of Procedure (Adopted on 13 February 1988) provide for two types of individual communications, namely: communications presented by a person who claims to be the victim of a violation of one of the rights set out in the Charter and communications presented by a person or organization, supporting the existence of a serious violation of human rights. These communications only allow the petition to be listed, the Commission being notified by communication only at the request of the absolute majority of its members.

Conclusions

The observance of human rights is a concern for almost every state in the world. The European continent is noticeable through more advanced human rights regulations. We must admit, however, that for some groups of the population this problem remains an unknown, abstract, theoretical or partially understood subject, the significance of these rights for the evolution of the state as well as for the life of the citizens not being sufficiently acknowledged.

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