

Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention

Strasbourg, 13.V.2004

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Agreement of Madrid (12.V.2009)
Explanatory Report
Français

Preamble

The member States of the Council of Europe, signatories to this Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 (hereinafter referred to as “the Convention”),

Having regard to Resolution No. 1 and the Declaration adopted at the European Ministerial Conference on Human Rights, held in Rome on 3 and 4 November 2000;

Having regard to the Declarations adopted by the Committee of Ministers on 8 November 2001, 7 November 2002 and 15 May 2003, at their 109th, 111th and 112th Sessions, respectively;

Having regard to Opinion No. 251 (2004) adopted by the Parliamentary Assembly of the Council of Europe on 28 April 2004;

Considering the urgent need to amend certain provisions of the Convention in order to maintain and improve the efficiency of the control system for the long term, mainly in the light of the continuing increase in the workload of the European Court of Human Rights and the Committee of Ministers of the Council of Europe;

Considering, in particular, the need to ensure that the Court can continue to play its pre-eminent role in protecting human rights in Europe,

Have agreed as follows:

Article 1

Paragraph 2 of Article 22 of the Convention shall be deleted.

Article 2

Article 23 of the Convention shall be amended to read as follows:

“Article 23 – Terms of office and dismissal

1. The judges shall be elected for a period of nine years. They may not be re-elected.

2. The terms of office of judges shall expire when they reach the age of 70.
3. The judges shall hold office until replaced. They shall, however, continue to deal with such cases as they already have under consideration.
4. No judge may be dismissed from office unless the other judges decide by a majority of two-thirds that that judge has ceased to fulfil the required conditions."

Article 3

Article 24 of the Convention shall be deleted.

Article 4

Article 25 of the Convention shall become Article 24 and its text shall be amended to read as follows:

"Article 24 – Registry and rapporteurs

1. The Court shall have a registry, the functions and organisation of which shall be laid down in the rules of the Court.
2. When sitting in a single-judge formation, the Court shall be assisted by rapporteurs who shall function under the authority of the President of the Court. They shall form part of the Court's registry."

Article 5

Article 26 of the Convention shall become Article 25 ("Plenary Court") and its text shall be amended as follows:

1. At the end of paragraph d, the comma shall be replaced by a semi-colon and the word "and" shall be deleted.
2. At the end of paragraph e, the full stop shall be replaced by a semi-colon.
3. A new paragraph f shall be added which shall read as follows:

"f. make any request under Article 26, paragraph 2."

Article 6

Article 27 of the Convention shall become Article 26 and its text shall be amended to read as follows:

"Article 26 – Single-judge formation, committees, Chambers and Grand Chamber

1. To consider cases brought before it, the Court shall sit in a single-judge formation, in committees of three judges, in Chambers of seven judges and in a Grand Chamber of seventeen judges. The Court's Chambers shall set up committees for a fixed period of time.

2. At the request of the plenary Court, the Committee of Ministers may, by a unanimous decision and for a fixed period, reduce to five the number of judges of the Chambers.
3. When sitting as a single judge, a judge shall not examine any application against the High Contracting Party in respect of which that judge has been elected.
4. There shall sit as an *ex officio* member of the Chamber and the Grand Chamber the judge elected in respect of the High Contracting Party concerned. If there is none or if that judge is unable to sit, a person chosen by the President of the Court from a list submitted in advance by that Party shall sit in the capacity of judge.
5. The Grand Chamber shall also include the President of the Court, the Vice-Presidents, the Presidents of the Chambers and other judges chosen in accordance with the rules of the Court. When a case is referred to the Grand Chamber under Article 43, no judge from the Chamber which rendered the judgment shall sit in the Grand Chamber, with the exception of the President of the Chamber and the judge who sat in respect of the High Contracting Party concerned."

Article 7

After the new Article 26, a new Article 27 shall be inserted into the Convention, which shall read as follows:

"Article 27 – Competence of single judges

1. A single judge may declare inadmissible or strike out of the Court's list of cases an application submitted under Article 34, where such a decision can be taken without further examination.
2. The decision shall be final.
3. If the single judge does not declare an application inadmissible or strike it out, that judge shall forward it to a committee or to a Chamber for further examination."

Article 8

Article 28 of the Convention shall be amended to read as follows:

"Article 28 – Competence of committees

1. In respect of an application submitted under Article 34, a committee may, by a unanimous vote,
 - a. declare it inadmissible or strike it out of its list of cases, where such decision can be taken without further examination; or
 - b. declare it admissible and render at the same time a judgment on the merits, 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 well-established case-law of the Court.

2. Decisions and judgments under paragraph 1 shall be final.

3. If the judge elected in respect of the High Contracting Party concerned is not a member of the committee, the committee may at any stage of the proceedings invite that judge to take the place of one of the members of the committee, having regard to all relevant factors, including whether that Party has contested the application of the procedure under paragraph 1.b."

Article 9

Article 29 of the Convention shall be amended as follows:

1. Paragraph 1 shall be amended to read as follows: "If no decision is taken under Article 27 or 28, or no judgment rendered under Article 28, a Chamber shall decide on the admissibility and merits of individual applications submitted under Article 34. The decision on admissibility may be taken separately."

2. At the end of paragraph 2 a new sentence shall be added which shall read as follows: "The decision on admissibility shall be taken separately unless the Court, in exceptional cases, decides otherwise."

3. Paragraph 3 shall be deleted.

Article 10

Article 31 of the Convention shall be amended as follows:

1. At the end of paragraph a, the word "and" shall be deleted.

2. Paragraph b shall become paragraph c and a new paragraph b shall be inserted and shall read as follows:

"b. decide on issues referred to the Court by the Committee of Ministers in accordance with Article 46, paragraph 4; and".

Article 11

Article 32 of the Convention shall be amended as follows:

At the end of paragraph 1, a comma and the number 46 shall be inserted after the number 34.

Article 12

Paragraph 3 of Article 35 of the Convention shall be amended to read as follows:

"3. The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that :

a. the application is incompatible with the provisions of the Convention or the Protocols thereto, manifestly ill-founded, or an abuse of the right of individual application; or

b. the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal.”

Article 13

A new paragraph 3 shall be added at the end of Article 36 of the Convention, which shall read as follows:

“3. In all cases before a Chamber or the Grand Chamber, the Council of Europe Commissioner for Human Rights may submit written comments and take part in hearings.”

Article 14

Article 38 of the Convention shall be amended to read as follows:

“Article 38 – Examination of the case

The Court shall examine the case together with the representatives of the parties and, if need be, undertake an investigation, for the effective conduct of which the High Contracting Parties concerned shall furnish all necessary facilities.”

Article 15

Article 39 of the Convention shall be amended to read as follows:

“Article 39 – Friendly settlements

1. At any stage of the proceedings, the Court may place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for human rights as defined in the Convention and the Protocols thereto.

2. Proceedings conducted under paragraph 1 shall be confidential.

3. If a friendly settlement is effected, the Court shall strike the case out of its list by means of a decision which shall be confined to a brief statement of the facts and of the solution reached.

4. This decision shall be transmitted to the Committee of Ministers, which shall supervise the execution of the terms of the friendly settlement as set out in the decision.”

Article 16

Article 46 of the Convention shall be amended to read as follows:

"Article 46 – Binding force and execution of judgments

1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.
3. If the Committee of Ministers considers that the supervision of the execution of a final judgment is hindered by a problem of interpretation of the judgment, it may refer the matter to the Court for a ruling on the question of interpretation. A referral decision shall require a majority vote of two thirds of the representatives entitled to sit on the Committee.
4. If the Committee of Ministers considers that a High Contracting Party refuses to abide by a final judgment in a case to which it is a party, it may, after serving formal notice on that Party and by decision adopted by a majority vote of two thirds of the representatives entitled to sit on the Committee, refer to the Court the question whether that Party has failed to fulfil its obligation under paragraph 1.
5. If the Court finds a violation of paragraph 1, it shall refer the case to the Committee of Ministers for consideration of the measures to be taken. If the Court finds no violation of paragraph 1, it shall refer the case to the Committee of Ministers, which shall close its examination of the case."

Article 17

Article 59 of the Convention shall be amended as follows:

1. A new paragraph 2 shall be inserted which shall read as follows:
"2. The European Union may accede to this Convention."
2. Paragraphs 2, 3 and 4 shall become paragraphs 3, 4 and 5 respectively.

Final and transitional provisions

Article 18

1. This Protocol shall be open for signature by member States of the Council of Europe signatories to the Convention, which may express their consent to be bound by
 - a. signature without reservation as to ratification, acceptance or approval; or
 - b. signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.
2. The instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 19

This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which all Parties to the Convention have expressed their consent to be bound by the Protocol, in accordance with the provisions of Article 18.

Article 20

1. From the date of the entry into force of this Protocol, its provisions shall apply to all applications pending before the Court as well as to all judgments whose execution is under supervision by the Committee of Ministers.

2. The new admissibility criterion inserted by Article 12 of this Protocol in Article 35, paragraph 3.b of the Convention, shall not apply to applications declared admissible before the entry into force of the Protocol. In the two years following the entry into force of this Protocol, the new admissibility criterion may only be applied by Chambers and the Grand Chamber of the Court.

Article 21

The term of office of judges serving their first term of office on the date of entry into force of this Protocol shall be extended *ipso jure* so as to amount to a total period of nine years. The other judges shall complete their term of office, which shall be extended *ipso jure* by two years.

Article 22

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe of:

- a. any signature;
- b. the deposit of any instrument of ratification, acceptance or approval;
- c. the date of entry into force of this Protocol in accordance with Article 19; and
- d. any other act, notification or communication relating to this Protocol.

In witness whereof, the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 13th day of May 2004, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.