

A SINGLE COURT OF HUMAN RIGHTS IN STRASBOURG

Andrew Drzemczewski

Directorate of Human Rights, Council of Europe

Introduction

Protocol No. 11, signed by all the Council of Europe member States and already ratified by thirteen of them (Bulgaria, Czech Republic, Cyprus, Hungary, Iceland, Lithuania, Malta, Norway, Slovakia, Slovenia, Sweden, Switzerland and the United Kingdom), establishes a full-time, single court to replace the Convention's present monitoring machinery. It will enter into force one year after all State Parties to the Convention have ratified it.

This text, opened for signature on 11 May 1994, constitutes the first concrete result of the decisions taken by the Council of Europe's Heads of State and Government at their summit meeting in Vienna on 8 and 9 October 1993.

Main aspects of the reform

1. The present part-time monitoring institutions, namely the European Commission of Human Rights and the European Court of Human Rights, will cease to exist. A new European Court of Human Rights, operating full-time, will be set up in Strasbourg.
2. The system will be streamlined and, above all, all applicants will have direct access to the new Court.

Any cases that are clearly unfounded will be sifted out of the system at an early stage by a unanimous decision of the Court, sitting as a three-judge committee (they will therefore be declared inadmissible). In the large majority of cases, the Court will sit as a seven-judge Chamber. Only in exceptional cases will the Court, sitting as a Grand Chamber of

17 judges, decide on the most important issues. The President of the Court and the presidents of Chambers will always be able to sit in the Grand Chamber so as to ensure consistency and uniformity of the main case-law. Whichever judge is elected in respect of the State Party involved in the case will also sit in the Grand Chamber in order to ensure a proper understanding of the legal system under consideration.

3. All allegations of violations of individual's rights will be referred to the Court; the Committee of Ministers will no longer have jurisdiction to decide on the merits of these cases, though it will retain its important role of monitoring the enforcement of the Court's judgments.
4. The right of individual petition will be mandatory and the Court will have jurisdiction over all inter-State cases.

Operation of the new procedure

As under the present system, individual applications and inter-State applications will exist side by side. As the Secretariat of the Commission does at present, the registry of the Court will establish all necessary contacts with the applicants and, if necessary, request further information.

Then, the application will be registered by a Chamber of the Court and assigned to a judge-rapporteur. The judge-rapporteur may refer the application to a three-judge committee, which may include the judge-rapporteur. The Committee may, by a unanimous decision, declare the application inadmissible; the decision will be final.

When the judge-rapporteur considers that the application raises a question of principle and is not inadmissible or when the Committee is not unanimous in rejecting the complaint, the application will be examined by the Chamber. (This procedure matches the system currently in force before the Commission.)

A Chamber, composed of seven judges, will decide on the merits of an application and, if necessary, its competence to adjudicate the case. The judge-rapporteur will prepare the case-file and establish contact with the parties. The parties will then submit their observations in writing. A hearing may take place before the Chamber. The Chamber will also place itself at the parties disposal with a view to a friendly settlement. If no friendly settlement can be reached, the Chamber will deliver its judgment.

The Chamber may decide *proprio motu* to refer a case to the Grand Chamber when it intends not to follow the Court's previous case-law or

when a question of principle is involved. This procedure may be adopted on condition that none of the parties objects to it (see new Article 30 of the ECHR).

Once the judgment has been delivered, the parties will have three months to request that the case be referred to the Grand Chamber. However, this procedure will be restricted to exceptional instances, i.e. when a case raises a serious question concerning the interpretation or application of the Convention and its Protocols or a matter of general interest. A panel of five judges of the Grand Chamber will determine whether the request for a rehearing is admissible (new Article 43 of the ECHR).

The Chamber's judgment will become final when there is no further possibility of a referral to the Grand Chamber. The Grand Chamber's judgment will be final and, as at present, binding in international law. As under the current system, the Committee of Ministers will supervise the execution of the Court's judgment.

Transitional arrangements

The Protocol, in Articles 4 and 5, regulates the transition from the present to the new system. As Protocol No. 11 is an amending protocol, all Parties to the Convention must express their consent for the text to become mandatory. It will come into force one year after the final ratification.

However, as specified by Article 4, the election of new judges and other preparatory steps will have to take place immediately after the last ratification.

Conclusions

Revision of the Convention was necessitated by the increase in the number of applications, their growing complexity and the widening of the Council of Europe's membership. The Convention was designed for 10 or 12 member States, and it is quite simply impossible for the present monitoring arrangements to work effectively with the expected 35 or 40 States Parties. Revision of the monitoring machinery was therefore essential to strengthen its efficiency.

In brief, the new system should, in particular:

- make the machinery more accessible to individuals;
- speed up the procedure and
- make for greater efficiency.

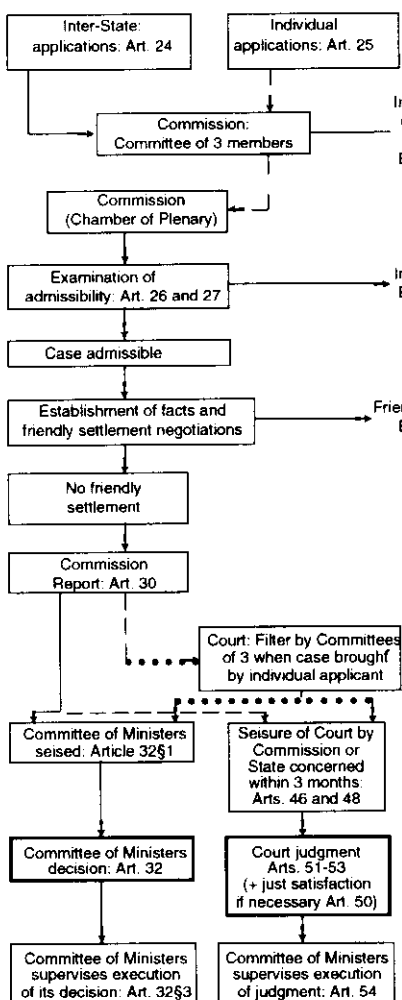
For further details, consult:

- Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms and Explanatory Report (Council of Europe Press, 1994, ISBN 92-871-2482-5);
- Vol. 15 Human Rights Law Journal (N.P. Engel, Publisher, 1994), pp. 81-115.

THE LOW ECHR CONTROL MECHANISM + LOW CHART:

PRESENT CONTROL MECHANISM

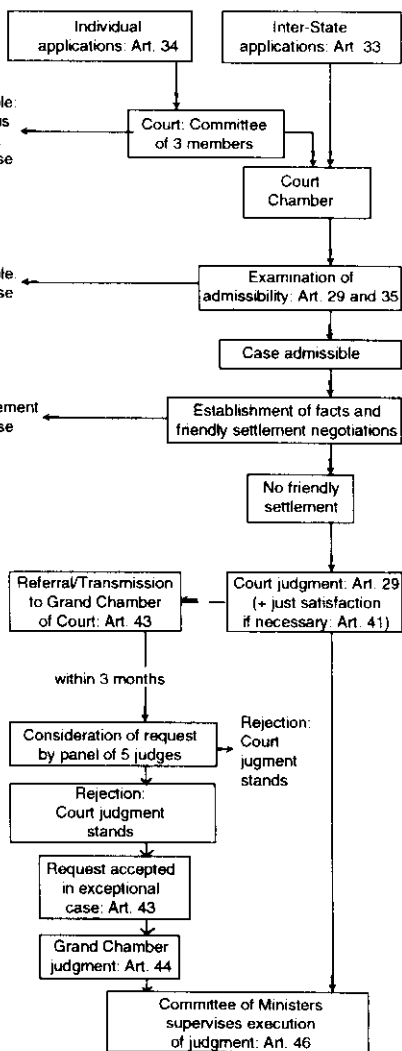
[Two distinct procedural stages before part-time Commission and then before part-time Court on Committee of Ministers]



Key: ——— optional jurisdiction
 ——— compulsory jurisdiction
 optional procedure protocol N°9 in force since 1.10.94

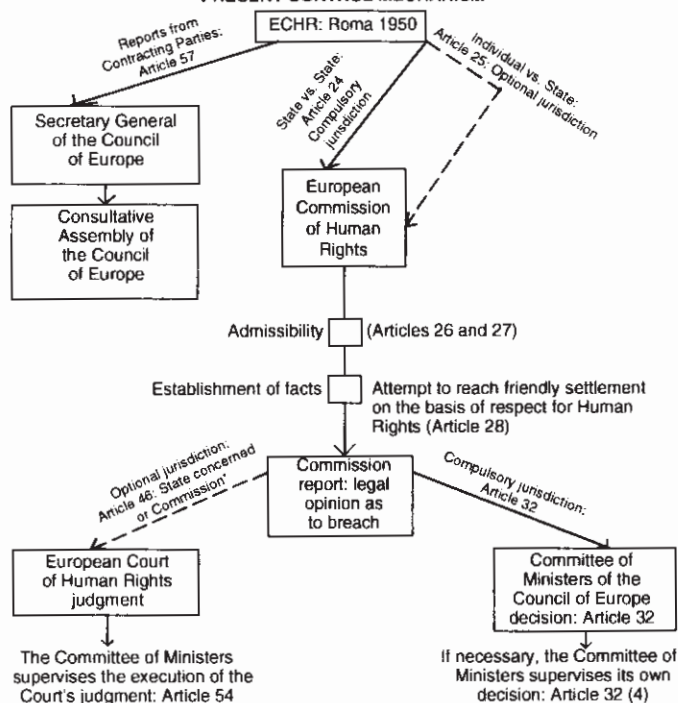
FUTURE CONTROL MECHANISM:

[Full time Court]

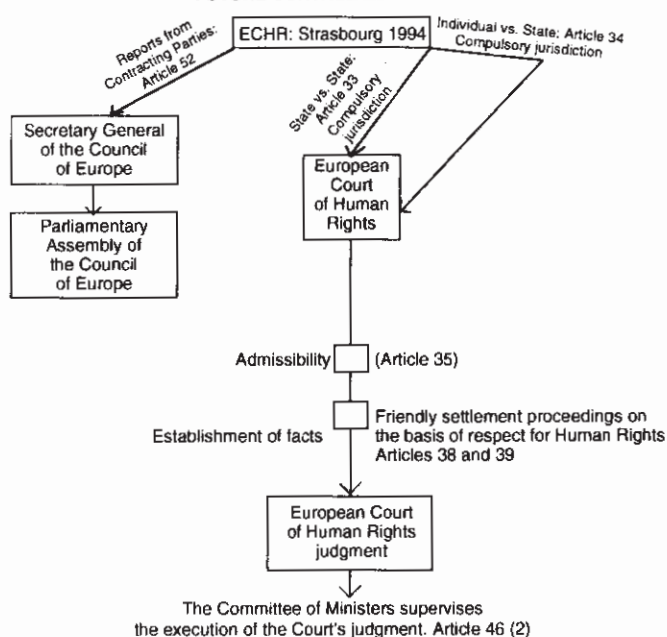


COMPARATIVE SCHEMA OF THE IMPLEMENTATION MACHINERY OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS (ECHR)

PRESENT CONTROL MECHANISM



FUTURE CONTROL MECHANISM



KEY: ————— Compulsory jurisdiction
 - - - - - Optional jurisdiction
 * Individual applicant with respect to States which have ratified Protocol N° 11