Deutscher Bundestag

Ausschuss für Menschenrechte
und humanitäre Hilfe

Ausschussdrucksache
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Durchsetzung internationaler und europäischer Menschenrechtskonventionen anlässlich des 70. Jahrestages der Europäischen Menschenrechtskonvention und der Verabschiedung der Allgemeinen Erklärung der Menschenrechte vor 75 Jahren

Stefan von Raumer, **Berlin**, Vizepräsident des Deutschen Anwaltvereins (DAV), Vorsitzender der Menschenrechtsausschüsse des DAV und des Rats der europäischen Anwaltschaften CCBE (Council of Bars and Law Societies of Europe) sowie Mitglied der Permanent Delegation des CCBE am EGMR (CCBE PD Stras.) und des Verfassungsrechtsausschusses des DAV

Jede Person, die in einem Vertragsstaat des Europarats wohnt, hat das Recht, beim Europäischen Gerichtshof für Menschenrechte (EGMR) eine Beschwerde gegen einen Staat (oder mehrere) wegen Verletzung eines durch die Europäische Menschenrechtskonvention oder andere Konventionen garantierten Menschenrechts einzureichen. Damit ist das Individualbeschwerdeverfahren eines der wichtigsten Mechanismen zur Einhaltung völkerrechtlich verankerter Menschenrechte. Voraussetzung hierfür ist, dass alle innerstaatlichen Rechtsbehelfe erschöpft wurden. Die Urteile, die der EGMR erlässt, sind rechtlich bindend. Die Praxis zeigt jedoch, dass Klageverfahren mit hohen Hürden verbunden sind bzw. EGMR-Urteile in vielen Fällen nur mangelhaft umgesetzt werden. Was sind die größten Hindernisse für ein Verfahren vor dem EGMR sowie für eine effektive Umsetzung seiner Urteile und welcher Maßnahmen bedarf es, um diese Probleme anzugehen und damit auch die Bedeutung und Glaubwürdigkeit des EGMR an sich zu stärken? (FDP)

I. Einleitung:

1. Mit der Europäischen Menschenrechtskonvention (EMRK, im Folgenden auch: die Konvention) wurde 1950 ein einzigartiges System zum Schutz der Menschenrechte als „erster Schritt“ zur kollektiven Durchsetzung einiger der in der Allgemeinen Erklärung der Menschenrechte der Vereinten Nationen (1948) genannten Rechte geschaffen.[1] Der Zuständigkeitsbereich des Europäischen Gerichtshofs für Menschenrechte (EGMR, im Folgenden auch: der Gerichtshof), der für die Prüfung individueller und zwischenstaatlicher Beschwerden über Verletzungen der Konvention zuständig ist, hat sich von den zehn ursprünglichen Mitgliedern auf die nach dem Ausscheiden Russlands derzeit 46 Mitgliedstaaten des Europarates ausgeweitet. Das hat, ebenso wie seine im Laufe der Jahre auf Grund seiner erfolgreichen Tätigkeit gestiegene Popularität seine Arbeitsbelastung dynamisch erhöht. Nach heutigem Stand wurden mehr als eine Million Fälle nach Straßburg gebracht und der Gerichtshof hat knapp 30.000 Urteile gefällt.

[1] Präambel der Konvention.

2. Anlässlich des 4. Treffens der Staats- und Regierungschefs des Europarates vom 16. bis 17. Mai 2023[2] haben die Mitgliedstaaten sich darauf geeinigt, sich verstärkt für die Wirksamkeit des Konventionssystems einzusetzen. Sie haben insbesondere beschlossen, den Schutz der Konventionsrechte durch die Tätigkeit der innerstaatlichen Gerichte unter Berücksichtigung der Rechtsprechung des Gerichtshofs zur Auslegung der Konvention zu gewährleisten und die bedingungslose und rasche Vollstreckung der Urteile des Gerichtshofs sicherzustellen.[3]

3. Diese beiden Themen, die wirksame innerstaatliche Umsetzung der Konvention durch die nationalen Gerichte und die unverzügliche und vollständige Vollziehung der Urteile des Gerichtshofs, sind die zentralen Fragen für die wirksame Umsetzung der Europäischen Menschenrechtskonvention. Sie sollten aufgrund der herausragenden Bedeutung der Konvention für den europäischen sowie internationalen Menschenrechtsschutz im Mittelpunkt der Diskussion im Deutschen Bundestag stehen.

II. Zur wirksamen innerstaatlichen Umsetzung der Konvention durch innerstaatliche Gerichte:

1. Trotz des unbestreitbaren Erfolgs des Gerichtshofs kann und will er nicht die erste und letzte Instanz zum Schutz der Konventionsrechte aller Menschen im Hoheitsgebiet der Staaten des Europarates sein. Die sich daraus ergebende Subsidiarität des Rechtschutzes beim Gerichtshof ist daher auch einer der bedeutsamsten Zulässigkeitskriterien einer Individualbeschwerde (vgl. Art. 35 Abs. 1 EMRK). Mit der ausdrücklichen Aufnahme des Subsidiaritätsprinzips und der „margin of appreciation“, dem Beurteilungsspielraum der Mitgliedstaaten bei der staatlichen Umsetzung der Verpflichtungen aus der Konvention im am 1. August 2021 in Kraft getretenen 15. Zusatzprotokoll zur Konvention, erhielt dieses Prinzip zusätzliches Gewicht.

2. Die heute sehr umfangreiche Rechtsprechung des Gerichtshofs zur Auslegung der Konvention dient dabei den nationalen Behörden und Gerichten und den nationalen Gesetzgebern als Leitlinie bei der Auslegung und Anwendung der Konvention und zwar zusätzlich zu dem sonstigen Grundrechtsschutz, den ihre nationalen Rechtssysteme (und in den Mitgliedstaaten der EU zusätzlich die Europäische Grundrechtecharta) bieten.

3. Es ist daher enttäuschend, dass ein so hoher Anteil von Fällen, über die der Gerichtshof schließlich zu entscheiden hat, Fragen betraf und betrifft, zu denen es eine längst etablierte Rechtsprechung des Gerichtshofs gibt, die aber von den innerstaatlichen Gerichten nicht berücksichtigt wurde - und dies, obwohl der Gerichtshof nur Fälle prüfen kann, in denen alle innerstaatlichen Rechtsbehelfe, einschließlich der Rechtsmittel vor den höchsten innerstaatlichen Gerichten, eingelegt und die Konventionsrechte mittels solcher innerstaatlichen Rechtsbehelfe zumindest der Sache nach von den Betroffenen ausdrücklich vorgebracht worden

[2] 1680ab40c1 (coe.int)

[3] Anhang 4: „Unter Betonung der vorrangigen Verpflichtung aller Hohen Vertragsparteien der Konvention, allen ihrer Hoheitsgewalt unterstehenden Personen die in der Konvention festgelegten Rechte und Freiheiten im Einklang mit dem Subsidiaritätsprinzip zu gewährleisten, der Bedeutung der Berücksichtigung der Rechtsprechung des Gerichtshofs in einer Weise, die der Konvention volle Wirkung verleiht, und der unbedingten Verpflichtung, den endgültigen Urteilen des Gerichtshofs in allen Rechtssachen, an denen sie beteiligt sind, Folge zu leisten.

waren (andernfalls mit dem Prinzip der materiellen Subsidiarität deren Individualbeschwerde zum Gerichtshof unzulässig gewesen wäre).

4. Der Gerichtshof befasst sich mit diesen sogenannten „Well Established Case Law“ (WECL)-Fällen indem er verkürzte Urteile in der Zusammensetzung eines Richterausschusses mit nur drei Richtern, nicht aber in einer Kammer mit sieben Richtern fällt. Wie aus dem Jahresbericht des Gerichtshofs für 2023[4] hervorgeht, ist die Zahl der Rechtssachen, die einem solchen Ausschuss mit drei Richtern zugewiesen wurden, um 33 % gestiegen, während die Zahl der bei einer Kammer anhängigen Rechtssachen um 48 % zurückgegangen ist (dennoch ist die Gesamtzahl der bei einem Ausschuss anhängigen Rechtssachen mit über 44.000 erschreckend hoch, insbesondere gemessen an den lediglich 4.400 Rechtssachen, die im Jahr 2023 durch ein Urteil erledigt wurden).

5. Konkret bedeutet dies, dass der Gerichtshof heute vor allem mit Fällen überlastet ist, von denen viele von den nationalen Gerichten hätten gelöst werden können - und mit deren Verpflichtung zur Beachtung der Konvention aus Art. 1 EMRK auch hätten gelöst werden sollen - und die damit gar nicht erst nach Straßburg hätten gebracht werden müssen. Die unzureichende innerstaatliche Umsetzung der Konvention durch die nationalen Gerichte auch in Fällen geklärter Rechtsprechungsvorgaben des Gerichtshofs ist damit ein maßgeblicher Grund für die Überlastung des Gerichtshofs – der sich auch durch weitere Reformen und Effizienzsteigerungen des Gerichtshofes nicht wird beheben lassen. Gemessen an den erheblichen Herausforderungen einer Verbesserung der innerstaatlichen Umsetzung der Konvention in den rechtstaatlich immer noch sehr inkohärenten Mitgliedstaaten des Europarates führt gleichwohl kein Weg an einer weiteren Effizienzsteigerung des Gerichtshofs vorbei, zu der im Folgenden noch Vorschläge unterbreitet werden.

III. Zum Konventionssystems zur Überwachung der Vollstreckung von Urteilen des Gerichtshofs durch das Ministerkomitee:

1. Eine massive Überlastung und erheblicher Reformbedarf ist auch beim Ministerkomitee des Europarates festzustellen, das nach Art. 46 Abs. 2 EMRK zur Überwachung der Durchführung der Urteile des EGMR zuständig ist. Der Jahresbericht des Ministerkomitees für 2023 zur Überwachung der Befolgung der Urteile und Entscheidungen des EGMR wurde gerade veröffentlicht. Er stellt Fortschritte fest, die jedoch bei Weitem nicht ausreichen.[5]

2. Auszüge aus dem Bericht des Ministerkomitees 2023 zeigen die Notwendigkeit einer Reform klar auf:

a. 40 % der Fälle im Ministerkomitee betreffen die Russische Föderation; 20 % der Fälle, die die heutigen Mitgliedstaaten betreffen, spielen in der Ukraine.

[4] https://rm.coe.int/annual-report-2023/1680af6e81

[5] Weitere Informationen über die Vollstreckung von Urteilen in den einzelnen Mitgliedstaaten sind verfügbar in den Länderkapiteln: Country Factsheets - Department for the Execution of Judgments
of the European Court of Human Rights (coe.int)

b. 160 Fälle oder Gruppen von Fällen betreffen 30 Staaten (einschließlich der Fälle gegen die Russische Föderation), dabei wurden im Jahr 2023 vom Ausschuss 53 Fälle mehr als einmal geprüft. Das ist immerhin ein Anstieg der Zahl der im Ministerkomitee geprüften Fälle um 10 % im Vergleich zu 2022, als lediglich 145 Fälle/Fallgruppen geprüft wurden.

c. Das Ministerkomitee hat 2023 die Überwachung der Umsetzung von 982 Fällen abgeschlossen (darunter 180 Leiturteile (leading cases), die eingehender Prüfung bedürfen). Das ist ein Anstieg um 12 % gegenüber 2022 (als für die Mitgliedstaaten die Umsetzung von nur 877 Fällen überwacht wurde, aber dafür die Umsetzung von 199 Leiturteilen abgeschlossen wurde).

d. Im Jahr 2023 wurde auch eine Rekordzahl von Aktionsplänen und Berichten zu den geplanten, bzw. getroffenen Umsetzungsmaßnahmen vorgelegt (835 gegenüber 763 im Jahr 2022 (+ 9 %)). Zu verzeichnen war auch ein Rückgang der Gesamtzahl der Fälle, in denen die Festsetzung einer gerechten Ausgleichszahlung aussteht.

e. Ende 2023 waren beim Ministerkomitee 3.819 Fälle (davon 1.071 zu Leiturteilen) gegen Mitgliedsstaaten anhängig, verglichen mit 3.760 (davon 1.088 zu Leiturteilen) Ende 2022;

f. Die im Jahr 2023 ergangenen Urteile des Gerichtshofs betrafen jedoch 6.931 Beschwerden, gegenüber 4.168 im Jahr 2022. Trotz der festzustellenden Effektivitätssteigerung des Ministerkomitees hat sich damit 2023, gemessen am Maßstab einer vollständigen Erledigung aller Fälle der Bearbeitungsrückstau des Ministerkomitees noch erheblich erhöht. Die Effizienzsteigerung des Gerichtshofs hat mit anderen Worten die Effizienzsteigerung des Ministerkomitees abgehängt, das ohne grundlegende Reformen die ihm aufgebürdete Arbeitslast nicht mehr wird bewältigen können.

g. Es gibt immer noch einige grundsätzlich in ihrer Bearbeitung zu diskutierende Bereiche, die ohne echte Lösungsperspektiven erhebliche Kapazitäten des Ministerkomitees binden:

i. Verstöße Russlands gegen die Konvention: Die Umsetzung/Vollziehung ist quasi illusorisch;
ii. Zwischenstaatliche und verwandte Fälle: Russland ist ein „Mehrheitsaktionär“; auch andere zwischenstaatliche Fälle sind praktisch unlösbar;
iii. Artikel 18-Fälle (Einschränkungen der Konventionsrechte) insbesondere die Inhaftierung politischer Gefangener betreffend.

3. Aber auch sehr viele normale „Kategorie IV-Fälle“[6] zeigen erhebliche Verzögerungen auf, die sich bei der Umsetzung durch das Ministerkomitee, in einigen Fällen aber auch schon bei der Absetzung der Urteile durch den EGMR ergeben haben. Hierzu sollen im Folgenden einige ausgewählte Beispiele aufgeführt werden:

[6] Dabei handelt es sich um potenziell aussichtsreich begründete Beschwerden im Sinne der Prioritätsstufen des EGMR: https://prd-echr.coe.int/documents/d/echr/Priority_policy_ENG

a. *Dragan Kovačević gegen Kroatien* Nr. 49281/15: Verstoß gegen Artikel 6 (Recht auf ein faires Verfahren) wegen der insbesondere für den Kläger - eine Person mit geringem Einkommen, die an einer geistigen Behinderung leidet - übermäßigen Kosten für die Einreichung eines verfassungsrechtlichen Verfahrens: Verfassungsbeschwerde eingereicht am 19. März 2014; Entscheidung des Verfassungsgerichts vom 20. Mai 2015; EGMR-Beschwerde vom 28. September 2015; Urteil des EGMR vom 12. Mai 2022: über sechseinhalb Jahre Entscheidungszeit; das kroatische Verfassungsgericht regelte die Verfahrenskosten im Jahr 2023 neu: 15 Monate Vollziehungszeit.

b. *Molla Sali gegen Griechenland* Nr. 20452/14 betreffend die obligatorische Anwendung des islamischen Erbrechts auf den Nachlass eines griechischen Muslims, der sein Testament vor einem Notar in Anwendung des griechischen Zivilgesetzbuchs errichtet hatte. Antrag im Jahr 2014; Urteil des EGMR am 19. Dezember 2018; Gewährung einer gerechten Entschädigung gemäß Art. 41 EMRK durch den EGMR im Juni 2020; Gesetzesänderung 2023: 5 Jahre Vollziehungszeit.

c. *Brazzi gegen Italien* Nr. 57278/11 betreffend das Fehlen eines Rechtsbehelfs zur Anfechtung einer polizeilichen Durchsuchung als rechtswidrig, in einem Fall, in dem kein Eigentum beschlagnahmt wurde: Die Durchsuchung fand am 13. Juli 2010 statt; die Beschwerde wurde am 5. September 2011 eingereicht; Urteil des EGMR vom 27. September 2018: sieben Jahre Entscheidungszeit; Gesetzesänderung Oktober 2022: 4 Jahre Vollziehungszeit.

IV. Zur Reform des Individualbeschwerdeverfahrens beim Gerichtshof:

Hier sollen folgende Vorschläge zur Reform des Individualbeschwerdeverfahrens vor dem EGMR unterbreitet werden, wie sie auch schon der CCBE vorgetragen hatte und die sich der DAV vollumfänglich zu eigen macht:

a. Vereinfachtes Verfahren für wiederholende sowie WECL-Fälle („Well-established-case-law) etablieren
b. Spezialisierungen von Kammern besser nutzen
c. Prioritätsprinzip effektiver anwenden
d. Entsendung von Anwälten in das Sekretariat der Generaldirektion Menschenrechte und Rechtsstaatlichkeit des Europarates
e. Eigenständiges Verfahren zur Prüfung der konkreten Entschädigung in WECL-Fällen

V. Zur Reform des Konventionssystems zur Überwachung der Vollziehung von Urteilen des Gerichtshofs durch das Ministerkomitee:

1. Die vom CCBE seit dem Jahr 2019 vorgeschlagenen Lösungsansätze zur Reform des Systems zur Überwachung der Vollziehung von Urteilen des Gerichtshofs[7] haben nichts an Aktualität eingebüßt.

So wurde bereits 2019 die Empfehlung ausgesprochen, dass das beim Ministerkomitee für die Überwachung der Vollziehung der Urteile des EGMR zuständige CMDH

> a. mehr Zeit für die Entscheidung über die Vollziehung von Urteilen vorsieht, indem es die Dauer seiner Sitzungen verlängert, mehr Sitzungen abhält und schrittweise zu „ständigen Sitzungen" übergeht; ein einziger zusätzlicher Sitzungstag pro Quartal würde die Zahl der Fälle, die im Rahmen des „verstärkten Verfahrens" geprüft werden, um 25 bis 30 % erhöhen (im Rahmen des sogenannten „verstärkten Verfahrens" werden die Umsetzungspläne für besonders dringende Fälle bzw. für Fälle von strukturellen Problemen eines Konventionsstaates behandelt);
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> b. die Transparenz bei der Bearbeitung von (schwerwiegenderen) Fällen im Rahmen des verstärkten Verfahrens weiter verbessert, konkret durch die Einbeziehung der Vertreter der Antragsteller bei der Einordnung neuer Urteile als Leiturteil (leading case), durch die Aufforderung zur Einreichung von Eingaben gemäß Regel 9[8] sowie durch die Bekanntgabe im Vorfeld jeder CMDH-Sitzung der zur Erörterung vorgeschlagenen Fälle;
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> c. Folgendes entwickelt und prüft:
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> i. ein neues, eigenständiges Verfahren zur Prüfung der Entschädigung, die in WECL-Fällen (offensichtlich begründeten Fällen) als „gerechte Entschädigung" im Sinne des Art. 41 EMRK fällig ist;
> ii. klare Kriterien für die Anwendung von Artikel 46 Absatz 4 EMRK zusammen mit neuen Regeln für die Prüfung von Fällen, in denen der Gerichtshof einen Verstoß gegen Artikel 46 Absatz 1 EMRK aufstellt;
> iii. Mittel zur Erleichterung der Vollstreckung von Entscheidungen zur gerechten Entschädigung durch nationale Gerichte, einschließlich, aber nicht beschränkt auf die Gerichte des beklagten Staates.
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> d. In Zusammenarbeit mit dem CCBE und den nationalen und lokalen Anwaltskammern und Anwaltsverbänden Schulungsmaßnahmen entwickelt, um die nach Regel 9 der Verfahrensordnung des Ministerkomitees durch Anwältinnen und Anwälte gemachten Eingaben zu verbessern sowie Anwälte aus der Praxis in das Sekretariat DG I (Directorate General I of Human Rights and Rule of Law) entsendet, um dessen Arbeit zu unterstützen und zu beschleunigen.

Ferner wurde der unterstützenswerte Vorschlag gemacht, die schleppende bzw. nicht erfolgende Zahlung der gerechten Entschädigung durch die Anerkennung der Urteile des Gerichtshofs als Schuldtitel im innerstaatlichen Recht anzugehen.

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[7] EN_PDS_20190628_CCBE-Proposals-for-reform-of-the-ECHR-machinery.pdf; sowie EN_PDS_20210521_Proposals-on-further-reform-of-the-ECHR-machinery.pdf (ccbe.eu)

[8] der Regeln des Ministerkomitees zur Überwachung der Befolgung von Urteilen und zu Bedingungen friedlicher Streitbeilegung – Verfahrensordnung des Ministerkommittees.

2. Der CCBE hat diese Vorschläge erstmals bereits vor 5 Jahren, im Jahr 2019, gemacht. Kurz vor der COVID-Pandemie und zu einer Zeit, als Russland hartnäckig daran arbeitete, die Effizienz des CMDH zu untergraben, war das Timing für die Reformvorschläge ungünstig. Nach der neuen Ausrichtung, die auf dem 4. Gipfel in Reykjavik im Jahr 2023 beschlossen wurde, ist nun ein guter Zeitpunkt, sich mit diesen zu befassen.

VI. Bedeutung der Rechtsprechung des Gerichtshofs für Rechtsstaatlichkeit als Rahmenbedingung des Menschenrechtsschutz im Fall der Rechtsstaatskrise in Polen:

1. Im Rahmen dieser Stellungnahme sollen nicht nur bestehende Durchsetzungsprobleme des Europäischen Menschenrechtsschutzes thematisiert werden, sondern auch positiv die Rechtsprechung des Gerichtshofs etwa zur Rechtsstaatlichkeitskrise in Polen und deren Auswirkungen erwähnt werden, die zunächst die zahlreichen Verstöße klar benannt hat, damit zu deren Sichtbarkeit beigetragen und deren Justiziabilität unter Beweis gestellt hat. So stellte der EGMR strukturelle Defizite im polnischen Justizsystem fest und wendete das sogenannte „Piloturteilsverfahren“ an, mit dem der Gerichtshof allgemeine Maßnahmen verlangt, um die Verletzungen und systemischen Mängel möglichst schnell und effektiv zu beseitigen (vgl. hierzu *Walesa gegen Polen*, Nr. 50849/21, Rn. 314 ff.).

2. Auch in verfahrensrechtlicher Hinsicht gibt es positive Entwicklungen, die hier erwähnt sein sollen: Aktuell entwickelt der EGMR ein System zur digitalen Einreichung der Beschwerde, die bisher lediglich auf postalischem Wege eingereicht werden konnte. Es ist zu hoffen, dass bei dieser Gelegenheit die Vorschläge zur inhaltlichen Optimierung des Beschwerdeformulars aufgenommen werden, die der CCBE unterbreitet hat[9] (etwa die Möglichkeit, im Antragsformular eine Größenordnung der erwarteten gerechten Entschädigung nach Art. 41 EMRK anzugeben, die Bereitschaft zur friedlichen Beilegung zu signalisieren, das Vorliegen eines WECL-Falls aufzuzeigen sowie auf strukturelle/systemische Defizite auf nationaler Ebene hinzuweisen).

VII. Prozessuale Hindernisse auf dem Weg zu einem Urteil des Gerichtshofs:

1. Eine praktische Herausforderung bei der prozessualen Geltendmachung von Verstößen gegen die EMRK ist zweifelsohne der bestehende Zeitdruck (seit einem Übergangszeitraum ab Inkrafttreten des 15 Zusatzprotokolls muss innerhalb von 4 Monaten nach der endgültigen innerstaatlichen Entscheidung die Beschwerde vollständig begründet eingereicht sein).

2. Dabei stellt der hohe Komprimierungszwang bei der Sachverhaltsdarstellung (derzeit 3 Seiten im Beschwerdeformular; entscheidungsrelevanter Sachverhalt darf nicht in den bis zu 20-seitigen Ergänzungsschriftsatz ausgelagert werden) und der Darlegung der Verstöße gegen die Konvention (derzeit 2 Seiten im Beschwerdeformular; zwar können die dort dargelegten Verstöße gegen die Konvention im 20-seitigen Ergänzungsschriftsatz näher erläutert werden, jedoch müssen alle Rügen der Verletzung der Konvention oder ihrer Zusatzprotokolle bereits vollständig mit Kurzbegründung im Beschwerdeformular selbst dargelegt werden) den Beschwerdeführer bzw.

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seinen Anwalt vor hohe Herausforderungen gerade bei komplexen und umfangreichen Angelegenheiten, wie etwa bei großen Wirtschaftsstrafsachen. Eine moderate Erhöhung des Raumes für den entsprechenden Vortrag im Beschwerdeformular, wie sie auch der CCBE fordert, wäre daher begrüßenswert.

3. Eine andere praktische Herausforderung in zeitlicher Hinsicht besteht darin, dass aufgrund der hohen Arbeitsbelastung des EGMR eine relativ zügige Entscheidung nur in sehr engen Ausnahmefällen zu erlangen ist. Am Stichtag 31. Dezember 2023 waren am EGMR 68.450 Verfahren anhängig[10]!

VIII. Staatliche Souveränität als Durchsetzungshindernis

Teilweise ergeben sich Hindernisse der Durchsetzung der Menschenrechtskonventionen, konkret auch mit Blick auf die Urteile des EGMR aus dem Einwand der nationalen Souveränität. Dies geschieht beim Gerichtshof etwa dann, wenn dieser nicht nur einen Verstoß gegen die Konvention feststellt, sondern im Falle eines systemischen und strukturellen Defizits dem betreffenden Staat konkrete Vorgaben macht, wie der Verstoß zu beseitigen ist.[11]

Um die Menschenrechte zu schützen und deren Geltung zu erkämpfen, bedarf es nationaler wie internationaler Institutionen. Wie bewerten Sie, 71 Jahre nach der Verabschiedung der Europäischen Menschenrechtskonvention und 76 Jahre nach der Allgemeinen Erklärung der Menschenrechte, den Zustand der nationalen und vor allem internationalen Menschenrechtsinstitutionen wie der Europäische Gerichtshof für Menschenrechte oder der Europäische Gerichtshof? Was muss aus Ihrer Sicht getan werden, um diese Institutionen und die internationale Geltung der Menschenrechte zu stärken? (SPD)

1. Der Zustand der internationalen Menschenrechtsinstitutionen selbst, wie des Europäischen Gerichtshofs für Menschenrechte und des Europäischen Gerichtshofs (EuGH) wird hier – mit gewissen Einschränkungen in Sachen Kapazität, Entscheidungszeiträumen und Vollziehungssystem, wie sie oben für den EGMR dargelegt wurden – als gut bewertet. Die gilt zumal zu bedenken ist, dass etwa der EGMR schlicht Opfer seines eigenen Erfolges ist, was ihm nun seine Kapazitätsprobleme einträgt. Eine Erhöhung der finanziellen Ressourcen gerade des EGMR wäre – so politisch schwierig sich dies darstellen mag – mit Blick auf die erhebliche Bedeutung des Menschenrechtsschutzes auch für den Wirtschaftsstandort Europa damit sehr wünschenswert.

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[10] Statista. (2024, 26. März). *Verfahren am Europäischen Gerichtshof für Menschenrechte 2023*. https://de.statista.com/statistik/daten/studie/76450/umfrage/anhaengige-verfahren-am-europaeischen-gerichtshof-fuer-menschenrechte/#:~:text=Die%20Statistik%20zeigt%20die%20Anzahl,Russland%20waren%2012.450%20Verfahren%20anh%C3%A4ngig.

[11] Vgl. etwa das Urteil des polnischen Verfassungsgerichts im Jahr 2021, dass der EGMR (welcher Polen wegen der umstrittenen Neubesetzung von frei gewordenen Richterstellen am Verfassungsgericht im Jahr 2015 (Az. 4907/18) verurteilt hatte), kein Gericht im Sinne von Artikel 6 EMRK sei und damit keine Befugnis habe, die Unabhängigkeit der polnischen Verfassungsrichter*innen zu überprüfen. Grundlage der Unabhängigkeit würden die polnische Verfassung und polnische Gesetze bilden (Urt. v. 24.11.2021, Az. K 6/21).

2. Erhebliche Sorgen bereitet – u.a. mit dem Obigen – die nationale Durchsetzung der EMRK und die Durchsetzung der Urteile insbesondere des EGMR. Die Geltendmachung und Durchsetzung des Rechts der Europäischen Union vor dem EuGH stellt sich im Rechtsschutzsystem effektiver dar, da der EuGH unmittelbar geltende bzw. rechtsgestaltende Entscheidungen treffen kann. Zur Verbesserung der nationalen Durchsetzung der EMRK ist hier sicher an die Erhöhung von politischem Druck zur Einhaltung der Menschenrechte zu denken. Eine Verknüpfung der Einhaltung von Menschenrechtsstandards mit wirtschaftlicher Kooperation ist ein Ansatz, aber auch die Bewusstwerdung, dass ein hoher Menschenrechtsstandard für den internationalen Handel sowie internationale Investitionen und damit die nationale Wirtschaftslage förderlich sein kann. Ferner sollte gerade das Gefahrenabwehrrecht betreffend das klare Gebot der Verhältnismäßigkeit auf allen Ebenen staatlichen Handelns besser verankert werden - der Zweck heiligt nicht die Mittel.

3. Wichtig sind dialogische Lösungen, wenn ein nationales Verfassungsgericht ein Problem mit seiner Verfassungsidentität sieht. Anstelle EU-Recht zu beanstanden, muss das nationale Gericht den Fall dem EuGH vorlegen, so dass eine paneuropäische Debatte entstehen kann, an der sich alle EU-Staaten beteiligen können. Der EuGH muss dann eine für alle Mitgliedstaaten tragbare Kompromisslösung finden, nationale Regelungsmöglichkeiten und Gestaltungsspielräume aufzeigen. Notfalls muss ein nationales Verfassungsgericht mehrfach vorlegen. Und auch Delegationsbesuche und die Mitarbeit nationaler Richter als Referenten am EuGH gehören zu einem gelungenen Dialog.

Menschenrechte sind längst ins Zentrum des gegenwärtigen Systemwettbewerbs gerückt. Obwohl ihr universeller Charakter nicht verhandelbar ist, wird er von autoritären Regimen, wie China oder Russland, offen angefochten und Menschenrechten interpretativer Spielraum unterstellt. Zum einen versuchen diese Staaten, mit Angriffen auf die Legitimität anerkannter Institutionen Menschenrechtsrelativierungen salonfähig zu machen. Zum anderen wird sich zunehmend auf kulturelle oder soziale Rahmenbedingungen, Religion oder (historische) Tradition berufen, um Menschenrechte einzuschränken. Nicht zuletzt, versuchen autokratische Staaten zunehmend in multilateralen Institutionen ein Alternativmodell herauszubilden und im Globalen Süden Verbündete für ihre Menschenrechtsnarrative zu finden. Wie kann diesen Tendenzen wirksam entgegnet werden, um den in der AEMR verankerten Grundsätze der Universalität, Unantastbarkeit und Interdependenz der Menschenrechte wieder verstärkt Gültigkeit zu verschaffen? (FDP)

1. Es ist ein nicht zu leugnender Umstand, der einer universalen Geltung und Durchsetzung von Menschenrechten entgegensteht, dass Menschenrechte im Gefüge der internationalen Wirtschaftsbeziehungen und gegenseitiger Abhängigkeiten auch zum Spielball wirtschaftlicher Interessen werden können.

2. Um die Unantastbarkeit der Menschenrechte als Abwehrrechte und allgemeiner Schutzstandard stärker abzusichern, muss auf allen politischen Ebenen des Staates verankert werden, dass es einen abwägungsfesten Kernbereich der Menschenrechte als „No-Go-Area“ für staatliche restriktive Maßnahmen geben muss.

3. Leider ist es immer wieder zu beobachten, dass selbst in Staaten, in denen die Einhaltung von Grund- und Menschenrechten grundsätzlich funktioniert, elementare Regeln eines rechtsstaatlichen Verfahrens missachtet werden und auch immer wieder der Zugang zu anwaltlicher Beratung erschwert oder gar verhindert, die Vertraulichkeit der Kommunikation missachtet wird und hierdurch der Zugang zum Recht vereitelt oder jedenfalls gefährdet wird. Auch dies sind Gebote der Europäischen Menschenrechtskonvention. Etwa die bevorstehende Entscheidung des Gerichtshofs im Beschwerdeverfahren *Jones Day gegen Bundesrepublik Deutschland,* in dem auch der CCBE eine Third Party Intervention lanciert hatte, wird zeigen, ob die dort gegenständliche Sicherstellung von Akten in einer Anwaltskanzlei diesen Geboten gerecht wurde.

Ergänzende Dokumente
Die Reformvorschläge des CCBE PD Stras ergeben sich im Detail aus den folgenden beigefügten Dokumenten:

1. EN_PDS_20190628_CCBE-Proposals-for-reform-of-the-ECHR-machinery
2. EN_PDS_20201113_CCBE-Proposals-to-DH-SYSC-V
3. EN_PDS_20210521_Proposals-on-further-reform-of-the-ECHR-machinery
4. EN_PDS_20240517_CCBE-proposals-for-the-upcoming-online-ECtHR-application-for

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Council of Bars and Law Societies of Europe
The voice of the European legal profession

Rue Joseph II, 40/8 - B-1000 Brussels
T.: +32 (0)2 234 65 10 - ccbe@ccbe.eu - www.ccbe.eu

CCBE Proposals for reform of the ECHR machinery

28/06/2019

The Council of Bars and Law Societies of Europe (CCBE) represents the bars and law societies of 45 countries, and through them more than 1 million European lawyers. The regulation of the profession, the defence of the Rule of Law, human rights and democratic values are the most important missions of the CCBE. The CCBE cooperates with the Council of Europe in a number of areas, notably through its membership of the Conference of International Non-Governmental Organisations, its observer status at the Steering Committee on Human Rights (CDDH), European Commission for the Efficiency of Justice (CEPEJ) and the Consultative Council of European Judges (CCJE), as well as at a number of committees and drafting groups related to the future of the Convention, migration, and freedom of expression. The CCBE has also a close relation with the European Court of Human Rights which includes among other things the publication and regular updating of a practical guide for lawyers (The European Court of Human Rights - Questions & Answers for Lawyers – last updated in 2018) and annual bilateral meetings to discuss issues of particular importance for the legal profession.

CCBE Proposals

The CCBE

CONSIDERING the importance of the effective protection of human rights;

RECALLING that human rights protection is the responsibility of national authorities and courts, supplemented by the subsidiary, but essential, role of the European Court of Human Rights (the Court);

CONCERNED by the length of proceedings under the European Convention of Human Rights (ECHR), involving both the Court and the execution of the Court's judgments, supervised by the Committee of Ministers though its specialised human rights committee, the CMDH;

MINDFUL of:

- The particularly severe delays affecting the backlog of serious cases which have been pending before the Court for years but whose examination has scarcely been accelerated by the reforms undertaken to date (the backlog);
- The risk that even after judgments are given in these backlog cases, often seven and too frequently ten or more years after they were first lodged with the Court, the execution of those judgments will often take up to five further years;
- The necessity for reforms which can rapidly contribute to reducing these cumulative delays, in order to maintain the credibility and efficiency of the ECHR machinery;
- The desirability of reforms which can be implemented without delay and which do not require amendments to the ECHR or any additional Protocol;
- The opportunity to propose reforms provided by the debate in the Committee of Ministers in the tenth year of the Interlaken Process;

ALERT to the responsibility incumbent on lawyers, as representatives of applicants in domestic proceedings and before the Court, to contribute energetically to assisting the reforms, both through this debate and especially through the implementation of improvements in training of lawyers to ensure that submissions on ECHR points are effective in national courts and before the Court and the CMDH:

RECOMMENDS:

A. That the Court:

1. Improve its dialogue with senior national courts by developing a practice of endorsement of ECHR – related arguments in submissions by senior national courts, including an assessment of the national significance of the case, which would help the Court to identify cases meriting priority because of such significance ;
2. Improve transparency and effectiveness by judicialising the *triage* of newly lodged applications to the Court, incorporating immediate case management decisions where possible and informing the parties accordingly;
3. Adopt a simplified procedure for repetitive and manifestly well founded (WECL) cases, based on the immediate case management decisions at the *triage* stage, whereby WECL cases could be declared admissible, but not normally result in a judgment from the Court;
4. Enhance the use of the Committee formation (3 judges) to improve the effective use of judicial resources and reform the composition of the Grand Chamber to a fixed composition to improve consistency of interpretation of the ECHR;
5. Exploit the advantages of the immediate *triage* of newly lodged applications and the associated judicial case management decisions to create a Chamber for urgent cases and strengthen the authority of - and consistency of decisions on - provisional measures; and
6. Develop additional training to prepare and enable the secondment of lawyers from private practice to support and accelerate the work of the Court's Registry.

B. That the CMDH:

1. Increase the time available for adjudicating on the execution of judgments by extending the duration of its meetings, holding more meetings and progressively moving to 'permanent session';
2. Further improve the transparency of its handling of enhanced procedure (more serious) cases by involving applicants' representatives in the allocation of new judgments to lead cases, inviting Rule 9 submissions and giving notice of the cases proposed to be debated in advance of each CMDH meeting;
3. Study and develop:
    a. a new distinct procedure for assessing the compensation based on just satisfaction due in WECL (manifestly well-founded) cases;
    b. clear criteria for using Article 46(4) together with new rules governing the scrutiny of cases where the Court finds that Article 46(1) has been breached; and
    c. means for facilitating the enforcement of just satisfaction awards by national courts, including, but not limited to, those of the respondent State.
4. Develop, in conjunction with the CCBE and national and local bars and law societies, training to improve lawyers' submissions under Rule 9 and to enable the effective secondment of lawyers from private practice to support and accelerate the work of the Secretariat DG I.

C. That the CCBE and its constituent national and local bars and law societies:

1. Work with the senior national courts to introduce the practice of endorsement of ECHR arguments by senior national courts to ensure the clear presentation and analysis of ECHR arguments raised in domestic appeals and to help the Court to identify cases meriting priority because of their national significance ;

2. Enhance their efforts to provide training or information through the Guide for Practitioners to ensure the effective deployment of ECHR arguments in national appeals and in submissions to the Court; and

3. Support efforts to provide specific training by experienced practitioners to prepare and equip lawyers for effective secondment to the Court Registry and the Secretariat DG I to help to address the backlog.

Explanatory Memorandum

Background

1. Through the Interlaken Process the Committee of Ministers of the Council of Europe has developed initiatives to reform the machinery of the European Convention of Human Rights (ECHR) within the confines of its current structure. The reforms have addressed both the European Court of Human Rights (the Court) and the supervision of the execution of the Court's judgments by the expert committee of the Committee of Ministers, the CMDH.

2. The aim of the reforms has been to enable the Court to deal effectively with its heavy current workload and substantial backlog. Significant reforms have been achieved, including the entry into force of Protocol No 14, with the adoption of a single judge composition for inadmissibility decisions, and the reform of Article 47 of the Rules of the Court, imposing strict formal rules for applications. These measures have led to a remarkable reduction of the numerical docket of more than 150 000 pending applications in 2011/2012 to currently about 56 000. Protocol No 15, emphasising the subsidiarity of the Court's role and reducing the time limit for lodging applications, is poised to enter into force.

3. As the number and complexity of judgments from the Court has increased so too has the burden of supervising their execution. The CMDH is supported in this task by the Department for the Execution of Judgments (DG I). The CMDH has streamlined its work by dividing cases into standard and enhanced categories. Standard cases are rapidly resolved, largely by DG I, but those allocated to enhanced examination frequently involve long delays and repeated examination, because States are slow, or worse, to redress violations.

A large backlog of serious cases remains involving delays of over ten years

4. The reforms to date have stabilised the numerical situation, but done little to address the backlog of serious cases, which are a significant proportion of the Court's docket. On the most favourable analysis, ten thousand serious, novel, cases are pending before the Court, which are still awaiting their first judicial examination. Some have been waiting for more than ten years. Many of these cases will result in findings of violations, so urgent steps are needed to tackle the backlog if confidence is to be maintained in the ECHR machinery. Ignoring all other cases (which the Court cannot) the backlog represents between six and ten years' work at the current rate of judgments.

5. This difficult position is accentuated by delays in the execution of judgments in serious cases and the stubborn list of some 700 leading judgments which still await execution more than

five years after the judgment was given by the Court[1]. Across the board, in serious cases, the time from application to judgment is very rarely less than three years and usually more than six, frequently more than ten[2]. Adding the delays to execution means that in many cases where the ECHR has been violated redress takes ten to fifteen years. New thinking is needed.

CCBE input into the Interlaken Process

6. To date there has been little practitioner input in the Interlaken Process. Nevertheless lawyers have an obvious interest in effective remedies for ECHR violations, as well as involvement and familiarity with the application procedure. The CCBE believes that it is high time to contribute to the debate on the reform of the ECHR machinery, as well as helping to make those reforms a reality.

7. To this end the CCBE's Permanent Delegation to the Court (PD Stras), comprising experts nominated by their national Bars and Law Societies, has held two Round Tables with the participation of invited experts to review the prospects for the reform of the Court and the CMDH. It has now developed the following practical suggestions for discussion which it hopes may both contribute to finding solutions to the current problems and to encouraging practitioners to put their shoulders to the wheel to help to implement these practical reforms.

8. The CCBE invites discussion of these proposals as an element in the debate. It intends that they should contribute practical and immediate ways in which the current backlog can be addressed for which no amendment of the ECHR is required. They build on the recognition of the subsidiary role of the Court, the need to enhance national human rights protection, and to improve the transparency and effectiveness of the Court and the CMDH so that the vital work of protecting human rights in Europe can be advanced.

<u>Recommendations concerning the Court</u>

Endorsement of ECHR arguments by the senior national courts

9. The subsidiary role of the Court means that national courts have the primary task of human rights protection. The CCBE proposes that senior national courts could contribute immediately to reducing the Court's case burden by including in one place in their judgments a clear brief analysis of ECHR arguments made in appeals before them and an 'endorsement' of the strength and importance of those arguments.

10. This proposal encourages a practice by senior national courts to the effect that, in any judgment rejecting a claim based on the ECHR, the judgment should state in a defined part, and not spread out in different parts of the judgment, a succinct statement of the reasons for dismissing the ECHR claim. Courts should also be encouraged to make a statement of the significance of that claim.

11. The national courts are already required to apply the ECHR, so to that extent the proposal does not impose a new obligation. Lawyers would be encouraged to focus their ECHR submissions in national appeals, facilitating the national courts' role in providing the primary protection of human rights. The precise means of implementing the new rule or practice would vary with the relevant rules of the senior national courts, but its object would be to make clear that ECHR arguments had been raised and dealt with, why they had been rejected and whether the

[1] The number of judgments still awaiting execution after five years is static: 2015: 685; 2016; 719; 2017: 718

[2] No 35432/07 *Mammadov v Azerbaijan* involving violations of Arts 2 (substantive and procedural), 3 and 5, 11 years and No 19788/03 *Ionescu and others v Romania* concerning violations of A1P1, 15 years

arguments and the case in general was of importance in the national legal system. Each of these issues is one which the senior national courts are well placed to assess.

12. Where the rejected appeal gave rise to an application to the Court, the applicant could rely on the senior national court's 'endorsement', both to illustrate immediately that domestic remedies had been exhausted by reference to the ECHR, and as to the national court's view of the importance of the case in the national legal system. Relevant factors might be that the case represented one of many raising similar issues, or a unique factual situation, or that the case was a remnant of a former legal rule, since amended.

13. The value to the Court of such a national judicial 'endorsement', or its absence, would vary. An endorsement would identify the heart of the ECHR case as argued in the national courts, satisfying the exhaustion criterion and identifying the scope of the ECHR issues at once. If a case was one of many in the national legal system that might suggest that a pilot procedure would be appropriate. The Court would recognise that a clear endorsement by a senior national court would be a relevant factor in the priority of examining the case, especially as the Court's present priority category II covers cases having major implications for the national legal system.

14. Conversely, the absence of an 'endorsement' would require the Court to test, as currently, whether and how the ECHR had been deployed before the national courts. The terms of the endorsement might also show not merely that an ECHR argument had been dealt with, but that it had no merit.

15. The Court would retain, as now, control over its priority policy, including the option to prioritise a case which the national legal system had mis-evaluated, but national judicial endorsement would be a valuable aid to the rapid *triage* of newly lodged applications and a guide to their future handling. The endorsement proposal would contribute to the dialogue between the senior national courts and the Court, to the potential benefit of proceedings before both.

Judicialising the initial *triage* of new applications

16. At present the first assessment of new applications is undertaken by the Registry's Filtering Section. Vital though this is, the assessments made remain confidential, because they are non-judicial. As the current backlog illustrates, this may result in many years of silence from the Court as to the fate of large numbers of serious applications. The CCBE proposes that this initial task is expanded to include judicial involvement, enabling formal case management decisions to be taken as soon as possible and to be communicated to the parties.

17. The initial *triage* process has great significance for the later processing of cases. Judicial involvement would increase the range of decisions available, increase their authority and allow those decisions to be public, enhancing transparency. At least four tracks can be identified at once: high priority cases, WECL cases, potentially leading to an early decision on admissibility and prompt resolution (see below); serious cases such as those currently in the backlog and cases which do not merit prompt attention. The last category could include many cases which are currently streamlined for disposal by a single judge. The Court's concern with reducing the numerical docket may distract judicial resources from the urgent task of addressing more serious cases, including the backlog. If the initial *triage* is backed by a judicial assessment, applicants can and should be told whether their applications merit prompt attention or not, and when they may receive it.

18. Judicial recognition of, and engagement with, the backlog would be beneficial. For those jurisdictions where the number of cases make delays in examining all but the most urgent cases inevitable, the Court should acknowledge this fact to the parties and set public targets

for the management of the backlog accordingly. All the Court's users would better understand the difficulties and act appropriately to address or alleviate them.

Simplified procedure for repetitive and WECL cases

19. The Court's docket includes about ten thousand pending cases which are repetitive or WECL cases. A new, rapid, procedure is needed for acknowledging and resolving them without engaging excessive resources in the Court. The CCBE proposes that normally these cases should be resolved by a decision on admissibility only, followed by friendly settlement or a unilateral declaration as the respondent Governments concerned and their Agents are well familiar with the relevant case law. .

20. Guidance will be required as to the appropriate level of compensation due in these cases, but again the principles are well-established. Objectively, these 'simple' cases merit rapid treatment much more that the obviously inadmissible cases which are currently the focus of significant rapid judicial attention. Efforts should be made to specify appropriate just satisfaction in the operative part of any judgment in repetitive cases or cases of continuing violation.

Broaden the use of Committees and fix the composition of the Grand Chamber

21. Given the recognition of the extent of the Court's established case law, the Court should make more use of the Committee formation of three judges to give judgments. In comparison with the seven judge Chamber, a Committee obviously involves a much lower commitment of judicial resources, potentially doubling the available judicial capacity of the Court. Realistically, if the Court is to increase it rate of giving judgments without increased resources, relying on Committees rather than Chambers is the principal available means of doing so.

22. The Grand Chamber's task is to resolve inconsistencies in case law and decide the most complex cases. Its task of maintaining judicial consistency would be met more effectively if the Grand Chamber retained a fixed composition, rather than having a different composition in each case. That composition could involve the President, Vice President and all Presidents of Chambers except the Chamber which determined the case previously, with the balance made up of members and alternates nominated to serve for a fixed period of perhaps two years.

A Chamber for urgent cases and enhancing the authority of interim measures

23. A significant number of urgent cases, including those involving detainees and raising issues under Article 3 ECHR are not dealt with as urgently as would seem merited. As part of the judicialisation of the *triage* process the allocation of cases to greater and lesser priority should be public and judicially justified. Applicants currently suffer from a 'postcode lottery' whereby limited resources in the Registry condemn some urgent cases to significant delays, whereas cases against other respondent Governments are processed promptly.

24. A partial remedy would be the introduction of a Chamber of the Court for priority cases. This would improve specialisation and consistency as well as ensuring focused judicial resources for the most urgent cases. At the same time the effectiveness of interim measures should be enhanced by the amendment of Rule 39(2) of the Rule of Court to make the notification of the Committee of Ministers of the Council of Europe of the granting of interim measures immediate and automatic.

Secondment of lawyers to the Court Registry and the acceptance of external funding

25. For some years the Court has operated a system of secondment of judges and government lawyers to supplement the capacity of the Registry. The secondees have been paid by their governmental employers and so have not imposed on the Court's budget. The new initiative of the Secretary General of the Council of Europe in proposing that the organisation should amend its financing rules to permit it to receive grants and similar funding from non-governmental bodies, provides the opportunity for appropriately trained private lawyers to be seconded in a similar way, if suitable grant funding can be secured.

26. The need for additional resources in the Registry is clear, but to be useful secondees need to be well trained before their arrival and able to commit to a sufficient period in the Registry to make a worthwhile contribution. The CCBE commits to support the development of the national 'endorsement' proposal and initiatives to improve the level of ECHR pleading in national courts as well as before the Court and the CMDH. Such efforts would contribute to preparing lawyer secondees to assist the Registry effectively from the outset.

Recommendations concerning the CMDH

27. The recommendations above are directed at increasing the speed and efficiency of decision making in the Court and improving transparency. However, the CMDH is already struggling with its own backlog in the supervision of complex judgments. If the Court's speed of giving judgments rises, the burden on the CMDH will also increase automatically.

28. This is especially so in relation to the cases caught now in the Court's backlog, some of which have been awaiting their first judicial examination for ten years or more. Those which result in judgments will be older still by the time that those judgments require execution, making them more complex from a factual, evidential and legal perspective. The CMDH needs to accelerate its work rate now if the worst delays in the Court are not simply to be replicated later in the supervision of the execution of judgments by the CMDH.

Accelerating the CMDH's work rate

29. Currently the CMDH meets four times a year for three days each meeting. The most serious cases are debated, but only between 12 and 20 cases can be fitted in for debate per meeting. Some cases are re-listed for debate at successive meetings to increase pressure on respondent States to accelerate execution. As a result, only fifty cases or so can be debated each year, which is less than a tenth of the enhanced scrutiny cases which have been pending for five years or more and those old cases are not the only urgent ones. Further by convention, no respondent Government currently faces debates on more than four cases per meeting. This limit is intended to prevent any Government from feeling 'picked upon', but it is an obstacle to the proper supervision of execution.

30. The CCBE proposes that the CMDH should immediately extend each quarterly meeting by one day, dedicated to debating additional serious cases. This very modest step would already increase the number of cases which could be debated each year by a quarter. As a second step, the number of meetings should be increased progressively until they are held monthly. At that rate all the over five year old cases would be debated in alternate years.

31. This increased frequency of meetings would have resource implications for the officials attending the CMDH and more importantly for those dealing with the execution and implementation of judgments in the national administrations. However, the Member States of the Council of Europe have already repeatedly committed themselves to the prompt and effective execution of the Court's judgments, most recently in the Brussels and Copenhagen

Declarations. Corresponding substantial recruitment will be needed in the Secretariat DG I to prepare the additional case summaries, but seconded lawyers, trained by their local Bars and Law Societies could also contribute to this effort as proposed below.

Increasing transparency and the involvement of applicants' representatives

32. The present listing of cases for debate is unsystematic and secret. Neither position is efficient. Debated cases may range from disappearances to prison conditions to property cases. In 2018, for the first time, the CMDH grouped the review and debate of cases relating to Article 3 in one thematic meeting. More focused thematic meetings of this kind are needed and would be achievable with more frequent meetings as proposed above. Thematic meetings would also permit the CMDH to develop a coherent priority policy, as the Court has done.

33. The secrecy about which cases will be debated is outmoded and does not befit a quasi-judicial instance dealing with human rights judgments. Great strides have been made recently to reduce the earlier almost total secrecy of the CMDH's work, but transparency is still not achieved. Three simple reforms in enhanced procedure cases would make a marked improvement immediately:

    a. Transparency in the allocation of new judgments to groups of cases following a 'lead' judgment. At present the criteria are uncertain;

    b. A standard form letter should be sent to applicant's representatives informing them of the allocation of their client's case to enhanced examination, identifying the relevant lead case and inviting brief submissions under Rule 9 of the Rules;

    c. Identification of the cases proposed for debate at the next CMDH meeting.

34. Small scale practitioner training is already being undertaken in relation to drafting Rule 9 submissions. Local Bars and Law Societies should raise awareness on this. This may also help national human rights institutions to make more frequent submissions to the CMDH on systemic issues. Thematic CMDH meetings, focusing on judgments concerning a particular Article would facilitate this, but these national agencies are stretched and short of resources, which is why involving applicants' representatives is so necessary.

35. Collectively these measures of increasing the number of CMDH meetings, greatly increasing the time available to debate cases, improving the transparency of the system and involving practitioners in supporting it, both as representatives and through training and secondments, are cumulatively capable of enhancing the capacity and quality of the CMDH's work.

Further proposals merit study and development

36. Three further proposals merit scrutiny and development:

    a. The CMDH needs to develop a new streamlined procedure for supervising the award of compensation in WECL cases which are declared admissible but do not proceed to judgment (see paras 18 & 19 above).

    b. The CMDH must develop its criteria for using Article 46(4). The initial experience in *Mammadov* is an important first step, although the Court's slow response to this first reference is disappointing. The CMDH and the Secretary General have referred to the finding of a breach of Article 18 of the Convention as a relevant reason for deploying Article 46(4), but that cannot be the sole criterion. Article 46(4) applies on its terms to the failure to abide by a judgment and not to the breach of a particular Article. The

CMDH also needs to develop its response and procedure where the Court finds that Article 46(1) has not been complied with.

c. Article 46(1) of the Convention confers on the Committee of Ministers the task of *supervising* the execution of judgments, rather than actual execution. The Committee of Ministers should study the means for national courts to provide execution of financial awards of just satisfaction. Such obligations are unconditional and involve no choice as to the means of implementation. Execution of such precise monetary awards by national courts, whether of the respondent State, or another State, could be supervised by the CMDH and enforced in national legal systems. Such a complementary mechanism merits close consideration.

Training and secondment to support the work of DG I

37. As noted above (at paras 25 & 26) in relation to the possibility of training for and secondment to the Registry of the Court, the proposed reform of the financing of the Council of Europe would potentially facilitate the secondment of suitably trained lawyers to assist the work of DG I. In view of the increasing demands on DG I and the CMDH and the solutions proposed above, substantial additional resources will be needed to meet the Member States' ambitious commitments to the prompt and effective execution of the Court's judgments.

38. The CCBE and its constituent Bars and Law Societies will be ready to contribute to this major effort if the ECHR machinery is to retain its credibility.

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Rue Joseph II, 40/8 - B-1000 Brussels
+32 (0)2 234 65 10 | ccbe@ccbe.eu | www.ccbe.eu

CCBE Proposals to DH-SYSC-V on enhancing the national implementation of the European Convention on Human Rights and the execution of judgments of the European Court of Human Rights

13/11/2020

The Council of Bars and Law Societies of Europe (CCBE) represents the Bars and law societies of 45 countries, and through them more than 1 million European lawyers. The regulation of the profession, the defence of the Rule of Law, human rights and democratic values are the most important missions of the CCBE. The CCBE cooperates with the Council of Europe in a number of areas, notably through its membership of the Conference of International Non-Governmental Organisations, its observer status at the Steering Committee on Human Rights (CDDH), the European Commission for the Efficiency of Justice (CEPEJ) and the Consultative Council of European Judges (CCJE), as well as at a number of committees and drafting groups related to the future of the Convention, migration, and freedom of expression. Practically, the CCBE is an accredited observer member of the HELP network, providing focused training on the Convention. The CCBE also has a close relation with the European Court of Human Rights (the Court) which includes among other things the publication and regular updating of a practical guide for lawyers (The European Court of Human Rights - Questions & Answers for Lawyers – last updated in November 2020) and annual bilateral meetings to discuss issues of particular importance for the legal profession.

The context for the present proposals is as follows:

A. The CCBE has followed the work of the CDDH on the evaluation of the reform of the Convention system during the Interlaken process with close attention and has been attending as an observer the meetings of DH-SYSC-V, the specialist committee tasked with making proposals for enhancing the national implementation of the Convention and the execution of judgments of the Court. This is work of high importance for the practical protection of Convention rights.
B. As part of the review of the Interlaken process, the CCBE has taken a detailed position on steps which can contribute to reforms and enhanced effectiveness. CCBE proposals based on expert analysis are set out in its Resolution of 28 June 2019 (the CCBE Resolution), which identified practical steps in which the legal profession can play its part with domestic courts and the Council of Europe institutions to improve the effectiveness and transparency of the protection of human rights through the domestic and international implementation of the Convention.
C. The CCBE therefore greets with enthusiasm the recognition now given to the place of the legal profession in the DH-SYSC-V terms of reference. The CDDH specified that its work should "be conducted in a prospective and, as far as possible, innovative way, in close cooperation with representatives of the legal profession, civil society and academic research".
D. The CDDH has already recognised in its Report on the longer-term future of the Convention system that: "Inadequate national implementation of the Convention by the States Parties remains among the principal challenges confronting the Convention system." It therefore set the detailed terms of reference for DH-SYSC-V as to "explore possible ways and means to enhance the national implementation of the system of the European Convention on Human Rights, in order to assist the State authorities involved in the operation of the Convention and in the process of the execution of judgments to fulfil their mission in the best possible way, in the light of existing national best practices". Guidelines should be prepared for adoption by

the Committee of Ministers of the Council of Europe to identify ways to enhance both the national implementation of the Convention and the execution of judgments of the Court.

E. DH-SYSC-V has initiated this task by inviting its participants, including observers, to make written submission to the Secretariat on the content of the draft Guidelines by 16 November 2020. The CCBE Resolution provides the basis for the following proposals for inclusion in the Guidelines.

The CCBE invites discussion of the proposals from the CCBE Resolution. They could contribute to practical and immediate improvements for which no amendment of the Convention is required. They build on the recognition of the subsidiary role of the Court, the need to enhance national human rights protection, and to improve the transparency and effectiveness of the Court and the CMDH so that the vital work of protecting human rights in Europe can be advanced.

The CCBE proposes that the following points from the CCBE Resolution should be incorporated in the Guidelines:

1. The legal profession and its Bars and law societies play an essential role as actors in the system of justice and so contribute to protecting the rule of law, ensuring access to justice for fellow citizens, and protecting fundamental rights and freedoms. Their independent role in ensuring the dissemination, implementation and respect for the Convention in domestic law, and before the Court, should be highlighted and protected (CCBE Resolution Explanatory Memo 6 to 8).

2. The subsidiary role of the Court means that national courts have the primary task of human rights protection. Senior national courts could contribute immediately to the transparency with which they determine Convention arguments by including in one part of their judgments in which a claim based on the Convention is rejected a succinct statement of the reasons for dismissing the Convention based claims. National courts are already required to apply the Convention, so this proposal does not impose a new obligation. Pinpointing the reasons why Convention arguments are rejected will provide clarity to litigants, serve to focus court users' arguments while ensuring transparency as to the protection of human rights 'at home'. It would also facilitate the Court's review of domestic compliance (CCBE Resolution C1).

3. The legal profession is an extensive resource for supporting HELP and extending practical training in the public and private sectors about the content of Convention rights, their interpretation in the Court's case law, their effective incorporation and implementation in domestic law and for the domestic execution of the Court's judgments (CCBE Resolution B4 and C2).

4. The execution of judgments at European level should be enhanced by (CCBE Resolution B2) :

    a. Increasing transparency as to the allocation of new judgments to existing grouped cases or 'lead' judgment. The criteria are opaque and their application is inconsistent;

    b. The development and publication of criteria for priority in the examination of judgments subject to enhanced supervision and their consistent application;

    c. Informing the legal representatives in cases allocated to enhanced supervision of the relevant 'lead' case and inviting brief submissions under Rule 9;

    d. Publicly identifying the cases selected for debate in advance of each CMDH meeting; and

    e. Enlarging the terms of Rule 9 to allow legal representatives and Bars and law societies to make submissions to the CMDH relating to general measures.

5. The execution of judgments at the national level should be enhanced by:

    a. Deploying the resources of Bars and law societies and their members with experience of bringing cases before the Court to provide training about the Convention and its interpretation by the Court to achieve the full implementation of Court judgments (CCBE Resolution C2 and 3); and
    b. Examining and developing the means to facilitate the enforcement by national courts of awards of just satisfaction made by the Court (CCBE Resolution B3c).

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Council of Bars and Law Societies of Europe
The voice of European Lawyers

Rue Joseph II, 40/8 - B-1000 Brussels
+32 (0)2 234 65 10 | ccbe@ccbe.eu | www.ccbe.eu

CCBE Proposals for further reform of the ECHR machinery

21/05/2021

The Council of Bars and Law Societies of Europe (CCBE) represents the bars and law societies of 45 countries, and through them more than 1 million European lawyers. The regulation of the profession, the defence of the Rule of Law, human rights and democratic values are the most important missions of the CCBE. The CCBE cooperates with the Council of Europe in a number of areas, notably through its membership of the Conference of International Non-Governmental Organisations, its observer status at the Steering Committee on Human Rights (CDDH), European Commission for the Efficiency of Justice (CEPEJ) and the Consultative Council of European Judges (CCJE), as well as at a number of committees and drafting groups related to the future of the Convention, migration, and freedom of expression. The CCBE also has a close relation with the European Court of Human Rights which includes among other things the publication and regular updating of a practical guide for lawyers (The European Court of Human Rights - Questions & Answers for Lawyers – last updated in 2020) and annual bilateral meetings to discuss issues of particular importance for the legal profession.

Explanatory Memorandum

CCBE reforms to the Execution of Judgments of the European Court of Human Rights

1. In June 2019, as part of the review of the Interlaken process, the CCBE adopted detailed proposals for reforms of the machinery of the European Convention on Human Rights (EN/FR). The reforms addressed senior national courts, the European Court of Human Rights (the Court), the Committee of Ministers of the Council of Europe through the CMDH, the human rights subcommittee for supervising the execution of judgments, and lawyers, Bars and Law Societies.
2. The CCBE's reforms are practical, but do not involve amending the Convention. The experience of the slow ratification of uncontroversial Protocol No 15, which took 7 years, is very unattractive. The CCBE's reforms could be implemented without delay. They have been discussed by PD Stras with the Court, the Committee of Ministers' Steering Committee on Human Rights, and with the Agents of the Member States.
3. The current German Presidency of the Committee of Ministers is focusing on the reform of the supervision of the execution of the Court's judgments. Under Article 46(1) of the Convention, Member States accept that judgments are binding. That is an unconditional legal obligation.
4. Nevertheless, and despite the Court's reputation, the execution of its judgments is a severe weak point. Of approximately 20,000 judgments ever given by the Court in which a violation

has been found[1], over 5,200 remain to be fully implemented[2]. 1,370 payments of compensation, fees and settlements are late and still outstanding[3]; individual redress and lasting general measures to avoid future breaches of the Convention are all chronically delayed. These delays add to the notorious delays of five to six years before the Court even gives judgment[4], after lengthy domestic remedies have been exhausted. New thinking is needed and the CCBE proposals provide it.

5. The CCBE's existing reform proposals need an additional focus on the 'tricky cases', where delays are worst. Lawyers, Bars and Law Societies need a clearer opportunity to be heard[5] and to contribute to addressing the backlog.
6. Two new additional steps are crucial in the continuing effort to make execution effective:
   a. The Rules of the Committee of Ministers for the supervision of the execution of judgments and settlements (the Rules) should allow lawyers, Bars and Law Societies to make proposals for all aspects of the execution of Court judgments; and
   b. Member States should allow the enforcement in their national courts of the payment of just satisfaction (compensation and fees) awarded by the Court and friendly settlements agreed to by the parties as a debt.

Changing the Rules

7. The work of the Committee of Ministers' specialist human rights committee, the CMDH, examines the execution of judgments applying the Rules, which were last amended in 2017[6]. A key provision is Rule 9, dealing with communications to the CMDH from the injured party, the respondent Government or others, in relation to the execution of any judgment[7].
8. As presently drafted, Rule 9(1) permits the injured party, through their lawyer, to make submissions to the CMDH relating only to the non-payment of just satisfaction or the taking of individual measures. Neither the injured party nor their lawyer can make submissions about any other aspect of the execution of the judgment. Bars or Law Societies have no *locus standi* to make any submissions.
9. However, under Rule 9(2) NGOs and national institutions for the protection or promotion of human rights (NHRIs), may make submissions on any aspect of 'the execution of judgments under Article 46(2) of the Convention', encompassing just satisfaction, individual or general measures, procedural questions, priority and whether the respondent Government has at all complied with the judgment[8].

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1 https://www.echr.coe.int/Documents/Overview_19592020_ENG.pdf
2 https://rm.coe.int/2020-cm-annual-report-eng/1680a1f4e8
3 https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a06354
4 https://www.echr.coe.int/Documents/Court_that_matters_ENG.pdf
5 These new proposals add to the CCBE's 2019 reform proposals that the CMDH should:
   a. Increase transparency as to the allocation of new judgments to existing grouped cases or 'lead' judgments. The criteria are opaque, and their application is inconsistent;
   b. Develop and publish criteria for priority in the examination of judgments, and apply them consistently;
   c. Inform the legal representative who acted before the Court that the case is allocated to enhanced supervision, which the relevant 'lead' case is and invite brief submissions under Rule 9;
   d. Publicly identify the cases selected for debate in advance of each CMDH meeting; and
   e. Increase the length of the CMDH meetings and their frequency, so that difficult cases can be examined more frequently than the present average rate of once in five years.
6 CM/Del/Dec(2017)1275/4.1 of 18 January 2017
7 The text of Rule 9 is set out in the Annex
8 The Committee of Ministers' Annual Report 2020 notes with satisfaction the increasing number of such submissions from NGOs and NHRIs

10. These restrictions on the role of lawyers in the procedures of the CMDH are inexplicable and unjustified.
    a. The CMDH has gradually increased the involvement of injured parties and their lawyers from nothing to something, but the present limitations, such as on procedural questions and the adequacy of the respondent Government's response to the judgment are unnecessary;
    b. The difference whereby NGOs and NHRIs can comment on any aspect of the execution of the judgment, but the injured party is restricted to whether payment has been made and individual measures has no rational justification;
    c. In the many years which follow the original violation, lawyers, including the applicant's lawyer, will experience various similar cases putting the original application in context. Those cases will often illustrate the scope of legal reforms necessary to prevent repetitive cases and the CMDH would benefit from knowing about them;
    d. It is extraordinary that, both the applicant's legal representative and the wider legal community of practising lawyers, working in specialist committees of Bars and Law Societies, and frequently involved in questions of legal reform and amendment, should be excluded from participating in ensuring the full implementation of the Court's judgment.
11. Rule 9(2) should be amended to expressly permit Bars and Law Societies as well and their international associations, such as the CCBE, the same scope to contribute to the work of the CMDH as that provided to NGOs and NHRIs. Similarly, the lawyer for the injured party should be enabled under Rule 9(1) to make equivalent submissions with regard to the execution of the judgment in which he, she or they were involved under Article 46(2) of the Convention.

Recognition and enforcement of payments in national courts

12. In addition to its practical proposals in 2019, the CCBE has carried out a study of the enforcement of monetary awards of just satisfaction by national courts, including, but not limited to, those of the respondent State. This was a specific response to the CMDH's revelation in December 2020 that 1370 payments of just satisfaction or settlements were still outstanding, some for many years[9].
13. The Committee of Ministers' report for 2020 shows that over the last ten years, during which the total number of Court judgments given has gradually fallen, the number of awards paid at all or on time has fallen steadily too[10]. Similarly, the apparently favourable statistic of friendly settlements reached is undermined by the number which remain unpaid, although agreed to by the Government concerned.
14. In short, the CMDH is not succeeding in securing payments, which should be the simplest part of the execution of judgments. Strasbourg is evidently not the best place for debt collection: what can be done to improve the situation?
15. The CCBE's PD Stras has reviewed the results of a survey of national court practice in relation to the recognition and enforcement of financial awards made under Article 41 of the Convention under domestic law[11]. Given the established process for national debt collection

[9] The Committee of Ministers' Annual Report 2020 acknowledges delays of over six months and counting in payments of awards of just satisfaction in 1118 cases and a stubbornly stable total of 634 leading cases (each with many related cases awaiting the outcome of the leading case), which have not been resolved after over five years https://rm.coe.int/2020-cm-annual-report-eng/1680a1f4e8.

[10] Ibid at page 65

[11] Round Table held on 210121 by PD Stras on the basis of a survey of national court practice.

in all Member States and the fact that the Convention is part of the domestic law of all Member States, it is time to transfer this part of the Committee of Ministers' work to the national legal systems, as an aspect of subsidiarity.

16. Repatriating the execution of monetary payments offers twin advantages of using existing national machineries of debt enforcement to accelerate these payments, both of awards of just satisfaction and of friendly settlements, and of relieving the Committee of Ministers of a work burden which it continues to find difficult, as the relevant statistics reveal. This reform will also allow the Committee of Ministers to concentrate on other aspects of execution of judgments, where there remains much to be done. Of course, the Committee of Ministers would still retain its responsibility to 'supervise' the execution of judgments in accordance with Article 46(2) of the Convention, as a long stop if national execution faltered.
17. The recognition of a financial obligation in domestic law arising from a judgment of the Court depends in the first place on the status of the judgment of an international tribunal in the domestic legal system. However, given the established position of the Convention in the domestic law of all Member States, and the unconditionally binding character of judgments imposed by Article 46(1) of the Convention, there is clearly scope to develop national practice and to relieve at least this burden from the Convention machinery and bring it home.
18. Specialist committees in the Council of Europe would be well placed to develop this area further and act as a catalyst for this reform, as is the CCBE.

CCBE Proposals for Reforms to the Execution of Judgments of the European Court of Human Rights

The CCBE

CONSIDERING the importance of the effective protection of human rights;

RECALLING that human rights protection is the responsibility of national authorities and courts, supplemented by the subsidiary, but essential, role of the European Court of Human Rights (the Court);

CONCERNED by the length of proceedings under the European Convention of Human Rights (ECHR), involving both the Court and the execution of the Court's judgments, supervised by the Committee of Ministers through its specialised human rights committee, the CMDH;

MINDFUL of:

- The necessity for reforms which maintain and enhance the credibility of the ECHR machinery which can be implemented forthwith, without the need to amend the ECHR or draft any additional Protocol;

- The risk that even when judgments are ultimately given, after cases have been pending before the Court for many years, the execution of those judgments often takes five further years. These execution delays include long delays in the payment of financial awards made by the Court (just satisfaction) and even of friendly settlements agreed to by the parties;

- The anomalous restrictions imposed on the role of lawyers and the legal profession, when compared with NGOs and others, by the Rules of the Committee of Ministers operated by the CMDH in receiving external input on the necessary steps for the execution of the Court's judgments;

ALERT to the responsibility which the CCBE has already taken to propose reforms and to participate in the debate with the Court and the Committee of Ministers generated by the Interlaken Process, and

the need to enlarge the opportunity for the legal profession to contribute further to that debate and to improve the efficiency of the ECHR machinery:

RECOMMENDS:

A. That the Committee of Ministers should amend its Rules for the Supervision of the Execution of Judgments and Settlements operated by the CMDH and notably Rule 9 to expressly permit lawyers instructed in the case, Bars and Law Societies and their international associations, such as the CCBE, to make proposals for all aspects of the execution of Court judgments under Article 46(2) of the ECHR;

B. That the Committee of Ministers acting with the Member States of the Council of Europe should ensure that the payment of just satisfaction (compensation and fees) awarded by the Court and of friendly settlements agreed to by the parties are enforceable as a debt in their national courts.

Annex

Rule 9 of the Rules

Rule 9 - Communications to the Committee of Ministers

1. The Committee of Ministers shall consider any communication from the injured party with regard to payment of the just satisfaction or the taking of individual measures.

2. The Committee of Ministers shall be entitled to consider any communication from non-governmental organisations, as well as national institutions for the promotion and protection of human rights, with regard to the execution of judgments under Article 46, paragraph 2, of the Convention.

3. The Committee of Ministers shall also be entitled to consider any communication from an international intergovernmental organisation or its bodies or agencies whose aims and activities include the protection or the promotion of human rights, as defined in the Universal Declaration of Human Rights, with regard to the issues relating to the execution of judgments under Article 46, paragraph 2, of the Convention which fall within their competence.

4. The Committee of Ministers shall likewise be entitled to consider any communication from an institution or body allowed, whether as a matter of right or upon special invitation from the Court, to intervene in the procedure before the Court, with regard to the execution under Article 46, paragraph 2, of the Convention of the judgment either in all cases (in respect of the Council of Europe Commissioner for Human Rights) or in all those concerned by the Court's authorisation (in respect of any other institution or body).

5. The Secretariat shall bring, in an appropriate way, any communication received in reference to paragraph 1 of this Rule, to the attention of the Committee of Ministers.

6. The Secretariat shall bring any communication received under paragraphs 2, 3 or 4 of this Rule to the attention of the State concerned. When the State responds within five working days, both the communication and the response shall be brought to the attention of the Committee of Ministers and made public. If there has been no response within this time limit, the communication shall be transmitted to the Committee of Ministers but shall not be made public. It shall be published ten working days after notification, together with any response received within this time limit. A State response received after these ten working days shall be circulated and published separately upon receipt.

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Council of Bars and Law Societies of Europe
The voice of European Lawyers

Rue Joseph II, 40/8 - B-1000 Brussels
+32 (0)2 234 65 10 | ccbe@ccbe.eu | www.ccbe.eu

CCBE proposals for the upcoming online ECtHR application form

17/05/2024

The Council of Bars and Law Societies of Europe (CCBE) represents the Bars and Law societies of 46 countries and, through them, more than 1 million European lawyers.

On 1 December 2023, the CCBE and various national Bars met with the European Court of Human Rights. Participants at this meeting took note that the Court is developing an electronic application form. Following discussions in the CCBE Permanent Delegation to the European Court of Human Rights (PD STRAS), the following practical points were identified arising from the use of the Court's current Application Form. These are submitted in the hope that they may assist the Court in addressing some of the practical difficulties which have arisen with the current application form.

1. **Pages 1 to 4 in the application form (the Applicant, Organisation, State(s) against which the application is directed, Representative(s) of the individual applicant and Representative(s) of the applicant organisation, Authority):**

There should be a possibility in the application form to add the required information on pages 1 to 4 for several applicants if their cases arise from the same facts and the same national proceedings.

2. **Page 1:** Insert a new box to specify the activity or profession of the individual applicant (mirroring box 13 for a legal entity).

3. **Pages 3 and 4:** Delete boxes 24, 31, 44 and 51 concerning faxes, as this communication tool is obsolete.

4. **The power of attorney** should be separated from the application form (as mentioned by a member of the Registry at the meeting with the Court on 1 December 2023, this is something that has already been envisaged by the Court).

5. **Pages 5 to 7 in the application form (Subject matter of the application, statement of the facts):**

Especially in complicated cases 3 pages in the application form to present the statement facts seem to be insufficient: we would suggest 4 pages.

The form should also permit the use of heads and to indent paragraphs and to use italic and bold for a clearer picture of the text.

6. **Pages 8 to 9 in the application form (Statement of alleged violation(s) of the Convention and/or Protocols and relevant arguments):**

Especially for the increasing number of complex cases, it would be desirable to add another page to the current 2 pages for the statement of alleged violations of the Convention.

7. Page 12 in the application form (list of the accompanying documents):

Add guidance that, where there are more that 25 accompanying documents arising from the domestic proceedings, continuation page(s) numbered in the sequence following the first 25 may be added to the application form, extending the list on page 12.

8. There are a number of issues which can currently only be covered in Box 71: Any other comments. The space in this box should be enlarged, or alternatively separate sections should be added to the form for the following points a. to h.:

a. An initial indication of the claims of just satisfaction under Art. 41 ECHR (material damage / moral damage / costs and expenses) or of any other measures sought in order to remedy the situation on individual level of the applicant (reopening of the proceedings; release from detention; enforcement of the final decision etc.);

b. Applicant's position regarding friendly settlement: possibility of friendly settlement yes/no (this could be indicative for the Court whether at all it is worth initiating the non-contentious phase of the proceedings) and if yes, under which circumstances/terms (this could allow the Government to accept reasonable proposals for a friendly settlement without having to get too much into details of the case);

c. identification of an underlying structural/systemic problem on national level if any;

d. identification of relevant existing WECL cases, which underline the opportunity for a friendly settlement;

e. Requests of any individual measure (release from detention etc.);

f. To add information on the prioritisation of the application and insert a new heading where the applicant could specify the degree of urgency of their application and whether it is an " impact" case;

g. In addition, this is the only appropriate place, but provides insufficient space to explain, practical issues such as:

    i. The fact that there is more than one legal representative and or more than one applicant, requiring additional pages 1-4;
    ii. The fact that additional pages are submitted with the Application Form, developing the arguments made in the Form itself, or the exceptional reasons why the number of additional pages exceeds 20;
    iii. Particular difficulties in obtaining the signature of the applicant on the application form as required by Box 33;
    iv. The nature of the documentary evidence that the person named in Box 38 has appropriate authority to bind and represent the Applicant;
    v. The fact that the number of accompanying Documents in Box 70 exceeds 25, necessitating one or more continuation sheet(s); and
    vi. Any necessary qualification which the representative may need to make to the declaration in Box 71

h. The possible 20 additional pages which may exceptionally accompany the Form.

9. The note explaining how to complete the application form should include specific information on what is permitted to be included in this additional material:

The current description is not quite clear. Applicants (and their lawyers) feel exposed that the material which they want to include may jeopardise the application. The current notes for filling in the application form says that "extra information or explanations" can be added to supplement the arguments made in the Application Form. Could greater clarity be provided? For example, is a more detailed development of the facts, with quotations from national decisions, permissible?