

UNIT 4: THE PROTECTION OF HUMAN RIGHTS FROM A REGIONAL PERSPECTIVE (I): THE WORK OF THE COUNCIL OF EUROPE

1. General ideas. 2. The European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 and its protocols. 3. The European Social Charter of 1961 and its protocols. 4. Other conventions for the protection of human rights.



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1. GENERAL IDEAS



- Council of Europe: European IO 47 States.
 - Statute of the Council of Europe, 5 May 1949.
- Purpose: union to safeguard and promote values and principles constituting a common heritage.
- Most advanced system of international human rights protection:
 - European Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950 + Protocols.
 - European Social Charter, 18 October 1961 + Protocols.
 - European Court of Human Rights (ECHR).

2. THE EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS AND ITS PROTOCOLS.

- Preamble Convention: to give legal content to the UDHR.
- 16 Additional Protocols (substantive and procedural protocols):
 - Additional Protocol of 20/3/1952, includes new rights (the right to peaceful enjoyment of property, the right to education and the right to free elections by secret ballot).
 - Protocol No. 2, confers upon the European Court of Human Rights competence to give advisory opinions.
 - Protocol No. 4, recognizing certain Rights and Freedoms in addition to those contained in the Convention and in the Additional Protocol of 16/9/1963 (no deprivation of liberty for non-fulfilment of contractual obligations, right to liberty of movement and freedom to choose one's residence, prohibition of a State's expulsion of a national, prohibition of collective expulsion of aliens).
 - Protocol No. 6 concerning the Abolition of the Death Penalty of 28/4/1983.
 - Protocol No. 7, adding new rights (The right of aliens to procedural guarantees in the event of expulsion from the territory of a State; the right of a person convicted of a criminal offence to have the conviction of sentence reviewed by a higher tribunal; the right to compensation in the event of a miscarriage of justice; the right not to be tried or punished in criminal proceedings for an offence for which one has already been acquitted or convicted (ne bis in idem); equality of rights and responsibilities as between spouses).

- Protocol No. 12 (general prohibition of non-discrimination).
- Protocol No. 13 concerning the Abolition of the Death Penalty in all circumstances.
- Permanently updated system:
 - Interpretation: European Commission on Human Rights.
 - 7/5/1999: Creation of the Commissioner for Human Rights of the Council of Europe, to promote education, awareness and respect.

A) OBLIGATIONS OF STATES PARTIES

- Art. 1 Convention: The High Contracting Parties recognize to all persons under their jurisdiction the rights and freedoms defined in Title I of this Convention.
 - Interpretation: Conventional instrument European public policy.
 - Ordinary territorial conception, admitting exceptions if the State party has assumed public powers through effective control and cases of extraterritoriality (acts of diplomatic/consular agents, aircraft and flag vessels). United Kingdom-Northern Ireland. Turkey: Southeast of the territory.
 - Art. 15 Possibility of derogation: State of emergency EXCEPT:
 - ❖ right to life;
 - ❖ prohibition of torture;
 - ❖ prohibition of slavery/servitude;
 - ❖ *nullum crimen/poena sine lege*;
 - ❖ Protocol No. 6 and 13 on abolition of death penalty;
 - ❖ Ne bis in idem (art. 4 and Protocol no. 7) .

B) RIGHTS RECOGNIZED

- Essentially: civil and political rights.
 - Convention:
 - ❖ Right to life.
 - ❖ Prohibition of torture.
 - ❖ Prohibition of slavery and forced labor.
 - ❖ Right to liberty and security.
 - ❖ Right to a fair trial.
 - ❖ Nullum poena sine lege.
 - ❖ Right to respect for private and family life.
 - ❖ Freedom of thought, conscience and religion.
 - ❖ Freedom of expression.
 - ❖ Freedom of assembly and association.
 - ❖ Right to marry.
 - ❖ Right to an effective remedy.
 - ❖ Prohibition of discrimination in the exercise of these rights.
 - Protocol No. 1:
 - ❖ Right to property.
 - ❖ Right to education.
 - ❖ Right to free elections.

- Protocol No. 4:
 - ❖ Prohibition of imprisonment for debt.
 - ❖ Freedom of movement.
 - ❖ Prohibition of expulsion of nationals.
 - ❖ Prohibition of collective expulsion of aliens.
- Protocol n° 7:
 - ❖ Procedural guarantees for the expulsion of foreigners.
 - ❖ Double degree of jurisdiction in criminal matters.
 - ❖ Right to compensation in case of miscarriage of justice.
 - ❖ Ne bis in idem.
 - ❖ Equality of spouses.
- Protocol No. 12:
 - ❖ Prohibition of discrimination.

C) GUARANTEES

- Convention: System of guarantees shared by three institutions:
 - European Commission on Human Rights (1954).
 - European Court of Human Rights (1959).
 - Committee of Ministers of the Council of Europe.
- System updated by Protocols:
 - Protocol No. 8: The European Commission on HR will have the possibility to set up Chambers (min. 7 members) to examine individual petitions which can be dealt with on the basis of established case law or which raise no serious question affecting the interpretation or application of the Convention. Too, the Commission may set up committees (min. 3 members), with the power, exercisable by a unanimous vote, to declare inadmissible or strike from its list of cases a petition when such a decision can be taken without further examination.
 - Protocol No. 9: applicant right to refer a case to the Court in certain circumstances.
 - Protocol No. 10: improving the Convention's supervision procedures. It changes the rule on the majority required when the Committee of Ministers is called upon to vote on whether the Convention has been violated in cases not referred to the European Court of Human Rights.
 - Protocol No. 11: Restructuration of the judicial system. All alleged violations of the rights of persons are referred directly to the new permanent Court.
 - Protocol No. 14: introduction of a new admissibility criterion, the treatment of repetitive cases or clearly inadmissible cases, for a more satisfactory operation of the European Court of Human Rights.

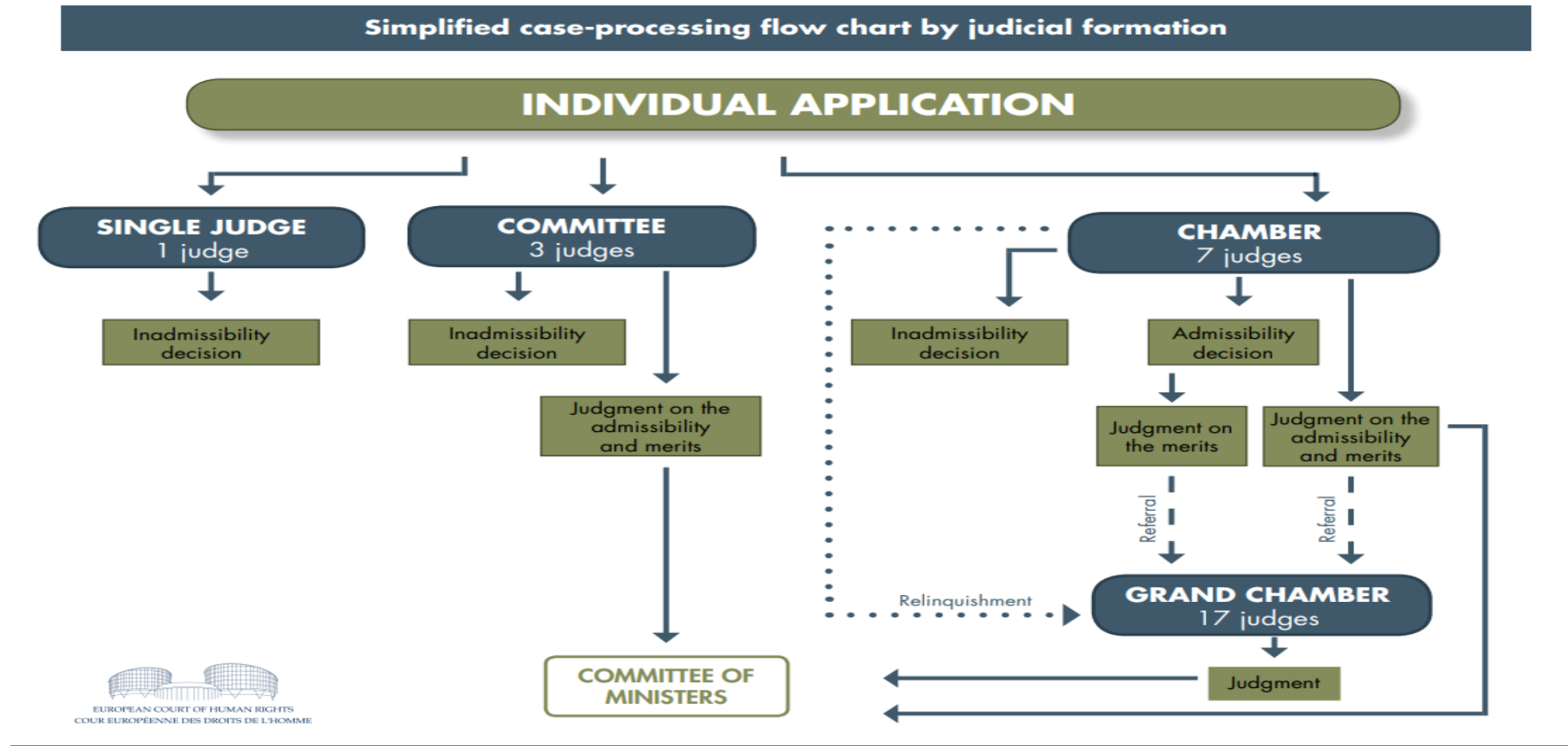
➤ Pending ratification:

❖ Protocol No. 15: Amendments to the Court system and deadlines.

D) THE EUROPEAN COURT OF HUMAN RIGHTS

- Composition:
 - No. of judges= States parties (highest moral consideration and conditions for the exercise of the highest judicial function or jurisconsults of recognized competence).
 - Election: Parliamentary Assembly of the Council of Europe by absolute majority from a list of three submitted by each State.
 - Nine years, not renewable.
- Organization:
 - Examination of cases: committees of 3 judges.
 - Chambers of 7 judges, or Grand Chamber of 17 judges + 3 alternates.
 - ❖ Grand Chamber: 3-year term, includes President, Vice-Presidents and Section Presidents.
 - Deliberations in camera and secret. Decisions by majority present.
- Jurisdiction:
 - Matters relating to the interpretation and application of the Convention and its Protocols, submitted under the conditions Art. 33-34-47 Convention.
 - **Contentious (compulsory):** between States (Art. 33) and individual claims (Art. 34).
 - ❖ Between States: Can be subject to claims in the abstract.
 - ✓ Conditions:
 - exhaustion of local remedies.
 - 6 months.
 - ❖ Individuals: natural persons, NGOs or particular groups (also legal persons) victims of violation (act or omission, or potentially) but not in the abstract.

- ✓ Conditions:
 - exhaustion of domestic remedies - effective and accessible
 - procedural requirements: not anonymous, prohibition of res judicata.
- ✓ Inadmissibility: claim incompatible with Convention and Protocols, ill-founded or abusive, no significant prejudice.



- **Consultative (restrictive):** Issuance of opinions at the request of the Committee of Ministers + Protocol No. 16: Possibility to render advisory opinions called by national highest courts. On legal questions of interpretation.
 - ❖ Submission to the Registrar and transmittal to the parties.
 - ❖ Issuance by Grand Chamber in public hearing.
- The judgment of the Court:
 - Judgment of the Chamber: reasoned and read in open court.
 - ❖ 3 months: request for referral to Grand Chamber (College of 5 Judges serious question relating to interpretation or application, or serious in general).
 - ✓ Grand Chamber Judgment: Final
 - ❖ Public in the appropriate form.
 - Binding force between the parties: declaratory, with the State choosing the means of redress.
 - ❖ Committee of Ministers: Monitor execution.
 - ✓ Protocol No. 14: reinforcement of competence.
 - Failure to comply with judgment: notify Party and by 2/3 majority refer to Court the matter.
 - If the ECtHR admits violation para. 1, referral to Committee of Ministers to examine measures.
- Life of an application: https://www.echr.coe.int/Documents/Case_processing_ENG.pdf

3. THE EUROPEAN SOCIAL CHARTER OF 1961 AND ITS PROTOCOLS

- 1961: European Social Charter.
- Subsequently:
 - Additional Protocol to the European Social Charter, 1988: Extension of the rights (right for workers to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the ground of sex; right for workers to be informed and consulted within the undertaking; right for workers to take part in the determination and improvement of working conditions and the working environment in the undertaking; right for elderly persons to social protection).
 - Protocol amending the European Social Charter, 1991: improving the Charter's monitoring system.
 - Additional Protocol to the European Social Charter Establishing a System of Collective Complaints, 1995.
 - Revised Social Charter, 1996: embodies in one instrument all rights guaranteed by the Charter of 1961, its additional Protocol of 1988, and adds new rights and amendments adopted by the Parties. It is gradually replacing the initial 1961 treaty.

A) *OBLIGATIONS OF STATES PARTIES*

- Art. 20 Charter: Commitment States Parties:

- To consider Part I as a statement of two objectives which it shall endeavor to achieve by all appropriate means.
- To consider itself bound by **at least five of the following seven articles** of Part II: Articles 1, 5, 6, 12, 13, 16 and 19.
- To be bound by **any additional number of articles or numbered paragraphs** of Part II that it chooses, provided that the total number of articles and numbered paragraphs to which it will be bound shall **not be less than 10 articles or 45 numbered paragraphs**.
- Labor inspection system.
- Possibility of suspension: Art. 30 for war or public danger.

B) RIGHTS RECOGNIZED

- Essentially: Social and economic rights
 - European Social Charter 1961:
 - ❖ Right to work.
 - ❖ Right to equitable working conditions.
 - ❖ Right to safety and hygiene at work.
 - ❖ Right to equitable remuneration.
 - ❖ Trade union rights.
 - ❖ Right to collective bargaining.
 - ❖ Right of children and adolescents to protection.
 - ❖ Right of women workers to protection.
 - ❖ Right to professional orientation.
 - ❖ Right to professional training.
 - ❖ Right to health protection.
 - ❖ Right to social security.
 - ❖ Right to social and medical assistance.
 - ❖ Right to the benefits of social services.
 - ❖ Right of physically or mentally handicapped persons to vocational training and professional or social rehabilitation.
 - ❖ Right of the family to social, legal or economic protection.
 - ❖ Right of mothers and children to social and economic protection.
 - ❖ Right to engage in gainful activity in the territory of other States Parties.

- ❖ Right of migrant workers and their families to protection and assistance.
- Protocol 1988:
 - ❖ Right to equality of opportunity and treatment in employment and profession, without discrimination based on sex.
 - ❖ Right to information and consultation.
 - ❖ Right to take part in the determination and improvement of working conditions and working environment.
 - ❖ Right to social protection of the elderly.
- Revised Social Charter:
 - ❖ Right to protection of workers in case of insolvency of the employer.
 - ❖ Right to dignity at work.
 - ❖ Right of workers with family responsibilities to equality of opportunity and treatment.
 - ❖ Right of workers' representatives to protection in the workplace and to the granting of appropriate facilities for the performance of their duties.
 - ❖ Right to information and consultation in the event of collective dismissals.
 - ❖ Right to protection against poverty and social exclusion.
 - ❖ Right to housing.
- Possibility of suspension due to war or public danger, and restrictions on some of the rights that must be established by law and be necessary.
- Scope of application: nationals and foreign nationals who are subjects of other States parties, legally residing or regularly working in the territory.

C) GUARANTEES OR CONTROL MECHANISMS

- Non-judicial mechanisms:
 - Reports on accepted provisions:
 - ❖ Referral to SG of biennial report.
 - Reports on provisions not accepted:
 - ❖ Referral to SG at appropriate intervals or request of the Committee of Ministers.
 - Additional Protocol 1995:
 - ❖ IOs and consultative and listed NGOs of the Governmental Committee and national organizations **may submit collective complaints for unsatisfactory application of accepted provisions.**
 - ✓ The Governmental Committee will prepare a report and the Committee of Ministers will prepare a resolution and recommendation on measures.
- Review: two supervisory bodies
 - Committee of Experts (now European Committee of Social Rights): 7 members appointed by the Committee of Ministers from a list of independent experts proposed by the States parties.
 - Governmental Social Subcommittee of the Council of Europe (now Governmental Committee): one representative of each State party + 2 employers and 2 workers (observers in an advisory capacity).

4. OTHER CONVENTIONS FOR THE PROTECTION OF HUMAN RIGHTS

- The work of the Council of Europe has been developed through other conventional texts:
 - European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 1987, and its Protocol No. 1 (possibility for non-member states to accede) and Protocol No. 2 (technical organizational aspects).
 - Convention on preventing and combating violence against women and domestic violence, 2011.
 - Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine, 1997.
 - ❖ Additional Protocol on the Convention on Human Rights and Biomedicine concerning Genetic Testing for Health Purposes, 2008.
 - European Charter for Regional or Minority Languages, 1992.
 - Convention on the avoidance of statelessness in relation to State succession, 2006.
 - Convention on Action against Trafficking in Human Beings, 2005.
 - Framework Convention for the Protection of National Minorities, 1994.



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