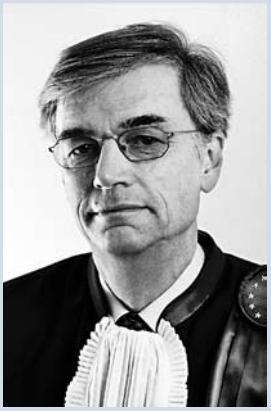
INTERVIEW OF THE EDITOR-IN-CHIEF OF THE «HUMAN RIGHTS. CASE-LAW OF THE EUROPEAN COURT» JOURNAL



WITH MR ERIK FRIBERGH,

THE REGISTRAR OF THE EUROPEAN COURT OF HUMAN RIGHTS

Vitaly Portnov:

I have two questions (one of a general nature and one of a specific nature) regarding the Rules of Court[1] and Protocol No. 14 bis[2].

Here is the question of a general nature: what will be the novelties in the operation of the European Court in the light of adoption of Protocol No. 14 bis and amendments to the Rules of Court, that is how the operation of the Registry is going to change?

Erik Fribergh:

The Rules of Court changed in two different respects on 1 July 2009. One change related to the order in which the Court examines applications (Rule 41) and the other relate to the Addendum to the Rules of Court[3] which concerns the provisional application of certain procedures in Protocol No. 14[4].

The order in which applications are examined

Until 30 June 2009, Rule 41 of the Rules of Court provided that «applications shall be dealt with in the order in which they became ready for examination». From 1 July 2009 the same Rule reads:

> «In determining the order in which cases are to be dealt with, the Court shall have regard to the importance and urgency of the issues raised on the basis of criteria fixed by it».

The background to this change is the exponential increase of applications pending before the Court. As long as the Court could deal with all applications within a reasonable time, it was natural to examine them in chronological order. However, the Court has realised that in the light of the increasingly long delays in handling applications, it was necessary to revise the order in which applications are dealt with so as to ensure that the most important applications are dealt with before more straightforward ones and, in particular, before applications which are in any event inadmissible. There has been a lengthy preparatory work within the Court before this new Rule was adopted. In February 2009, the Plenary Court adopted a new policy concerning the handling of applications which aims at concentrating the Court's efforts on the most important applications.

Basically what will happen now when an application comes in to the Court is the following.

The application will first be analysed by a Registry lawyer, who will make an initial assessment of the application and place it on the right procedural track. Every application will be placed in one of seven categories starting with urgent applications where for instance the risk of life or health is at stake. Thereafter follow applications which may have an impact on the effectiveness of the Convention or which raise an important question of general interest and then applications which raise issues under Articles 2, 3, 4 or 5 § 1 of the Convention. The middle category is normal Chamber applications. The least important applications are repetitive applications, complex Three-Judge Committee applications and manifestly inadmissible applications.

The principle is that the cases should be dealt with in order of importance on the basis of these categories. However, if the Registry lawyer considers that the application belongs to the last category, he/she should immediately prepare a short note for decision by the Three-Judge Committee or, for the Single Judge.

It is clear from the preceding paragraph that, in reality, the last category of applications will be dealt with if not first at least very quickly. The explanation is that these applications should be so clear and thus simple to prepare for a decision, that it is better to deal with them at once when they have been categorised since, putting them aside for later examination, would only create more work in the longer term.

The implementation of this new policy will take some time. The objective is that the overall effectiveness of the Court and the Convention system should be improved when emphasis is placed on dealing with the important cases. There is also a link to subsidiarity insofar as the most important problems at national level will be identified more rapidly, thus enabling effective remedial action sooner.

Since the more important applications are normally more difficult to deal with and, hence, require more work, the risk is that the Court will deal with a lower number of applications in the future. The decision to deal with the very simple straightforward cases immediately will reduce this risk or at least attenuate its effects.

The provisional application of certain procedures in Protocol No. 14

On 12 May 2009 in Madrid two new legal instruments were adopted by the Committee of Ministers, both of which had the same purpose, namely to make it possible for the Court to apply the Single-Judge procedure and the new competence for Three-Judge Committees as foreseen by Protocol No. 14.

[1] For the Russian translation of the text of the Rules of Court in their new version of 1 July 2009 see p. 8 of the current issue of the journal (*Editor's note*).

[2] Translation of the text of Protocol No. 14 bis to the Convention was published in the issue No. 7 of the journal, 2009 (*Editor's note*).

[3] For the translation of the text of the Addendum to the Rules of Court see p. 38 of the current issue of the journal (*Editor's note*).

[4] Materials related to Protocol No. 14 to the Convention were published in the issue No. 9 of the journal, 2007 (*Editor's note*).

The two new instruments were, on the one hand, a new Protocol to the Convention called Protocol No. 14 bis, and, on the other hand, an Agreement between the negotiating States of the European Convention on Human Rights on the provisional application of the above two procedures.

Protocol No. 14 bis requires three ratifications. It will enter into force on 1 October 2009. However, a State may also indicate under Protocol No. 14 bis that it accepts the two procedures provisionally before the entry into force. If so, such provisional application will start on the first day of the month following the declaration of provisional application. The Agreement will apply in respect of a State as from the first day of the month following the declaration of the State that it accepts the two procedures under the Agreement.

The Court adopted new Rules of Court on 29 June 2009. The new Rules, which are contained in an Addendum to the Rules of Court, entered into force on 1 July 2009.

By 1 July 2009 already, 7 States (Denmark, Germany, the Netherlands, Norway, Luxemburg, Switzerland and the United Kingdom) had made the necessary declarations either under Protocol No. 14 bis or under the Agreement.

The first Single-Judge decisions were adopted in the first week of July 2009.

The Single-Judge procedure under Protocol No. 14 provides for a system whereby the decision is taken by a Single Judge with the assistance of a Non-Judicial Rapporteur, who is a member of the Registry. The Single Judge is appointed by the President of the Court.

The Non-Judicial Rapporteurs (NJR), who are all members of the Court's Registry, are appointed by the President of the Court on the proposal of the Registrar.

The Single-Judge procedure operates in the following way.

The initial legal analysis is carried out by the NJR or a legal assistant supervised by the NJR. He/She will designate the application as a possible application for the Single-Judge procedure. Thereafter, the NJR will draft a short note proposing that the application be declared inadmissible or struck out.

The note will be sent to the Single Judge for decision. A copy of the note is also sent to the national judge for information.

If the Single Judge considers after consultation with the NJR that a particular application should be examined by a Committee or a Chamber, she/he will so decide.

After the decision, the applicants will be informed of it in the normal way by a letter from the Registry.

The provisional application of Protocol No. 14 also gives the Court the possibility of assigning to Three-Judge Committees applications which should be decided on the merits where the issue is covered by well-established case-law of the Court. In order to benefit as much as possible from this new power and in line with what has been said in the Explanatory Report[1], the Court has adopted a simplified procedure for these cases.

The initial preparation of the cases remains the same as before. The only addition being that the Judge Rapporteur in his/her analysis will indicate that the case appears to be suitable for examination by a Three-Judge Committee. The case follows the usual procedure for communication by the Section President. The Committee will be seized with the application once the parties have submitted written observations and Article 41 claims.

The new element lies in the fact that due to the well-established case-law on the issue in question the Court would not need any observations from the Government. Consequently, under this new simplified procedure the Government are not invited to submit observations but are only given an opportunity to submit such observations, if they so wish. At the same time the parties are encouraged to settle the case.

Should no settlement be achieved and if the Government would wish to submit observations those would be sent to the applicant for information only. At the same time he/she would be asked to submit claims under Article 41 of the Convention. Such claims will later be sent to the Government for comments.

Thereafter the case would be prepared in the usual manner and presented to the Committee for examination.

The procedure is simplified because it reduces the procedural steps compared to the normal Chamber procedure. Instead of having two rounds of submissions, there will now be a maximum of one (the applicant's views in his/her application and the Government's possible comments).

By 1 September 2009, 15 States had accepted the new procedures. They had entered into force with regard to 12 States: Belgium, Denmark, Estonia, Germany, Iceland, Ireland, Liechtenstein, Luxemburg, the Netherlands, Norway, Switzerland and the United Kingdom. Georgia will join that number on 1 October 2009 and Slovenia and Monaco will do so on 1 November 2009.

On 1 September 2009 a total of 270 Single-Judge decisions had been taken (Denmark 7, Germany 178, Luxembourg 2, Netherlands 17, Norway 17, Switzerland 8 and United Kingdom 41).

Vitaly Portnov:

The specific question concerning Russia: what will be changed by the amended Rules of Court in the work of the Registry of the Court in the cases against Russia?

Erik Fribergh:

As regards the new priority policy, this will also apply to applications against the Russian Federation.

The provisional application of Protocol No. 14 will however not apply to Russian cases as long as the Russian Federation has not made an express declaration that it accepts that new procedure for applications against the Russian Federation. I still hope that the Russian Federation will soon be able to ratify Protocol No. 14 so that also the citizens of the Federation can benefit from this possibility for the Court to answer complaints more quickly.

[1] Explanatory Report to Protocol No. 14 § 68—72.