

Amendments of European Convention on Human Rights, Protocol No.14

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Abstract: Human rights are defined as those rights which are fundamental to our nature and without them we cannot live as human beings. This article is focused on the European Convention of Human Rights as a very important international treaty. The effective machinery of European Convention of Human Rights, in an unique and unprecedented way has provided its data regularly to solve individual requirements and also in the overall impact on international law and practice. The article is compiled in two parts: the center of the first part is the European Convention of Human Rights in chronological flow and the second part is a detailed treatment of Protocol No. 14. The European Convention on Human Rights has always been a dynamic act, reflecting the needs of time. Proof of such dynamism is the large number of protocols that have entered into force and continuous improvements. The purpose of Protocol No. 14 was to extend the effectiveness of the Court to act and short proceedings.

Keywords: European Convention of Human Rights, European Court of Human Rights, Protocol, Procedure, European Union, Law.

1. Introduction

The present article aims as well as describing the current amendments concerning European Convention on Human Rights (ECHR) as at explaining the Protocol No.14 System and possible effectiveness it brings de jure and de facto to the European Court of Human Rights (Court of Human Rights). The amendments of Convention on Human Rights incorporated to the original text on one hand have determined a set of fundamental rights and freedoms and sanctioned their violations and by the other hand have changed the mechanism of the Court of Human Rights. The Protocol No.14 introduces three significant changes in the Court of Human Rights' handling of cases consisting of: the "single-judge formation" entity, the expansion of the powers of three-judge Committees and the addition of a new admissibility criterion for individual applications.

The subject of the first chapter is a brief summary of ECHR and its amendments, from the obligatory minimum standard of rights to the changes such amendments define to the protection of Human Rights. The second chapter clarifies the factors which raised the need of Protocol No.14 and the major reforms it proposed and also focuses on the long time it took from the adaption to the entry in force.

The interpretation will be mainly based on the acts of Council of Europe (COE) as the ECHR and its amendments, counting in total 14 Protocols, and advisory opinions of these amendments and in particular Protocol No.14; in addition, the entrance into force and the implementation of Protocol No.14 is considered in the light of Russian Federation position on this Protocol, from the objections to withhold its consent, to the recommendation of the adaption of Protocol No.14bis, which did not require unanimous ratification and the final ratification of Russian Federation.

The amendments are explained by taking into account the original objective and purpose of ECHR and how protocols have tent to improve it by affecting the institutional, procedural and jurisprudential aspects of the original system.

Based on this approach, present article will show amendments of ECHR and their central issues.

2. ECHR

The impetus for an international agreement for the protection of human rights and fundamental freedoms came as a regional response to the sensitive situation after the Second World War and the need of institutionalising common values in Europe. The Convention for the Protection of Human Rights and Fundamental Freedoms, better known as the "European Convention on Human Rights", was opened for signature in Rome on 4 November 1950; it entered into force on 3 September 1953.¹ It is a convention of COE and the latest has 47 member states.

The ECHR jointly with its amendments presents a set of rights and freedoms against which no reason of state may prevail, prohibitions of certain treatments or punishments and also establish the mechanism for their guarantee and

¹ European court of Human Rights The ECHR in 50 Questions,5, available at echr.coe.int/NR/rdonlyres/5C53ADA4-80F8-42CB-B8BD-CBBB781F42C8/0/FAQ_ENG_A4.pdf, retrieved on 07.03.2012.

sanction. The ECHR gave effect to certain of the rights stated in the Universal Declaration of Human Rights thus, this declaration and its aim are evoked in the preamble of the ECHR.²

2.1 Amendments of ECHR

The development of the ECHR created under the COE is clarified by considering the collision between the enthusiasm and reluctance. While at the first Session of the Consultative Assembly of the COE on 17 August 1949, as a representative of the United Kingdom, Winston Churchill declared the hope that a European Court might be set up, before which cases of the violation of the rights founded on the decisions of the United Nations at Geneva might be brought to the judgment of the civilised world.³ the British firmly opposed any attempt to establish binding legal obligation, centralized institutions, individual petition, or compulsory jurisdiction.⁴

Despite of objections and debates the ECHR has followed a path characterized by the fulfilment of its primary aim; the institutionalizing and protection of fundamental rights and freedoms. As a living instrument reflecting the dynamism of European society and attempting the maximum efficiency of its bodies the ECHR has been amended by 14 Protocols.

Amendment as a simple term means the act of changing a text or another act, whereas in reference to the amendments of ECHR, it includes the 14 Protocols which have brought changes to the original act. Although states would bind themselves by conventions to guarantee the fundamental freedoms collectively, within the framework of a Council, by a certain procedure and under the control of a Court of Human Rights⁵, the amendments on the original text have sometimes led to discussions depending upon the political sensitivity such as Protocol No.14.

2.2 Protocols

After the adoption of the ECHR the recognition for a need to a protocol sometimes was immediate and sometimes it took years. A proof of evidence for the immediate recognition of need was Protocol No.1 which entered into force in 18 May 1954; it took years from the idea to create a single Court of Human Rights to Protocol No.11 which entered in force in 1 November 1998.

The protocols containing additional provisions have acted in two main directions; while some of them have recognized additional rights, the others are dedicated to procedural matters. The protocols are binding only on those states that have signed and ratified them. The states must also take their measures to guarantee the implementation of the dispositions of ECHR and when requested any High Contracting Parties shall furnish an explanation of the manner in which its internal law ensures the effective implementation of any of the provisions of the Convention⁶. High Contracting Party may take measures derogating from its obligations under the ECHR in foreseen cases.⁷

Some of the protocols have added fundamental rights such as: the right to peaceful enjoyment of property, the right to education and the right to free elections by secret ballot, Protocol No.1; 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.4; abolition of the death penalty, Protocol No.6; 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, equality of rights and responsibilities as between spouses; a general prohibition of discrimination, Protocol 12; banning the death penalty in all circumstances, Protocol 13. Though

² European Conventions on Human Rights, as amended by Protocols Nos.11 and 14, Council of Europe Treaty Series No.5, 5, available at echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/CONVENTION_ENG_WEB.pdf retrieved on 03.03.2012.

³ Janis, Mark W., Kay Richard S., Bradley, Anthony W., McColgan, Aileen, Murdoch, Jim *European Human Rights Law*, Oxford University Press (2008), Third Edition, 69.

⁴ Steiner, Henry J., Alston, Philip, Goodman, Ryan, *International Human Rights in Context Law Politics Morals*, Oxford University Press, (2007), Third Edition, 934.

⁵ Mowbray, Alastair, *Cases and Materials on the European Convention on Human Rights*, Oxford University Press (2007), 2nd Edition, 5.

⁶ European Conventions on Human Rights, as amended by Protocols Nos.11 and 14, Council of Europe Treaty Series No.5, Article 52, available at echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/CONVENTION_ENG_WEB.pdf retrieved on 03.03.2012.

⁷ *Ibid* Article 15.

Protocol No. 2, Protocol No.3, Protocol No.5, and Protocol No.8 had been an integral part of the Convention all their provisions are replaced by Protocol No. 11. The Protocol No.9 has been repealed and Protocol No.10 has lost its purpose as from the date of entry into force of Protocol No.11.⁸

As a matter of principle, death penalty seemed contrary to the convention as inhuman and degrading treatment and this was reflected in two protocols, in Protocol No.6, abolishing the death penalty in time of peace and Protocol No.13, abolishing death penalty in all circumstances.⁹

Notwithstanding the importance the protocols brought to ECHR, Protocol No. 11 and Protocol No.14 resulted in considerable changes to the act itself and the mechanism of Court of Human Rights.

2.3 Protocol No.11

The original system in the determination of applications consisted of three institutions: the European Commission of Human Rights, the Court of Human rights and the Committee of Ministers of the COE. The three organs worked together in a multi-phase procedure. In view of the increase in the number of applications and the growing membership of the COE the Recommendation 1194 (1992)¹⁰ of the Parliamentary Assembly recommended that the Committee of Ministers:

- take the necessary steps to reform the control mechanism of the ECHR without delay;
- give clear preference to the proposal to create a single court as full-time body in place of the existing Commission and Court;
- refrain from opting for a temporary solution that would further delay the necessary reform.

The entire system was streamlined by Protocol no.11 which entered in force in 1 November 1998. It created a new institutional system for determining applications, built upon the institutional, procedural and jurisprudential heritage of the original system¹¹. Protocol No.11 established a new full-time Court of Human Rights with judges in respect of each state party. The protocol changed the composition of the Court and its organization, defined the Status of the judges, introduced the Registry of Court and detailed the procedure for the determination of applications. Though the former admissibility was retained, due to the importance of the determination of applications, provisions of procedure have been supplemented by Rules of Court. The Committee of Ministers has the duty to supervise Court's judgements execution.¹²

Protocol No.14: Major Reforms

The reform brought by Protocol No.11, was followed by a significant increase in the Court's caseload. Barely ten years after the reform, Court of Human Rights delivered its 10,000th judgment, output which shows that more than 91% of the Court's judgments have been delivered between 1998 and 2011.¹³

The European Court on Human Rights' excessive caseload manifests itself in two areas in particular; processing the very numerous individual applications which are terminated without a ruling on the merits and processing individual applications which derive from the same structural cause as an earlier application otherwise called repetitive cases.¹⁴ These figures led to the urgent measures to be taken. In order to improve the efficiency and effectiveness of the Court of Human Rights Protocol No.14 intended to change more the structure of the system than its functioning. This protocol

⁸ List of the treaties coming from the subject –matter: Human Rights (Conventions and Protocols only) available at conventions.coe.int/Treaty/Commun/ListeTraites.asp?MA=3&CM=7&CL=ENG, retrieved on 03.03.2012.

⁹ Press release issued by the Registrar Chamber Judgment, *Al-Saadoon and Mufdhi v the United Kingdom*, 174/10, available at cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=863738&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649 retrieved on 14.03.2012

¹⁰ Recommendation 1194 (1992) on the reform of the control mechanism of the European Convention on Human Rights available at assembly.coe.int/documents/adoptedtext/ta92/erec1194.htm retrieved on 14.03.2012

¹¹ Mowbray, Alastair, *Cases and Materials on the European Convention on Human Rights*, Oxford University Press (2007), 2° Edition

¹² Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, restructuring the control machinery established thereby, available at conventions.coe.int/Treaty/en/Summaries/Html/155.htm retrieved on 14.03.2012.

¹³ ECHR Overview 1959-2011, 4, available at echr.coe.int/NR/rdonlyres/E58E405A-71CF-4863-91EE-779C34FD18B2/0/APERCU_19592011_EN.pdf retrieved on 14.03.2012.

¹⁴ Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention (CETS No. 194) available at echr.coe.int/NR/rdonlyres/1EC62EF1-E72F-4B6A-976C-7CBB22CFCAC8/0/Protocol14Explanatory.pdf, retrieved on 07.03.2012

introduced changes in three main areas¹⁵.

Firstly, it reinforced the Court's filtering capacity in respect of the mass of unmeritorious applications. Such change would be possible by making a single judge competent to declare inadmissible or strike out an individual application. Secondly, in art.35 ECHR it was inserted a new admissibility criterion concerning cases in which the applicant has not suffered a significant disadvantage. Under this new admissibility criterion, the Court of Human Rights shall declare inadmissible any individual application submitted under the art. 34 if it considers that applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the ECHR and the protocols thereto requires an examination of the application on the merits and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal.¹⁶ As a third important change were the measures for dealing with repetitive cases as a competence of the committees of three judges. If the question raised by the case is the subject of the well-established case-law of the Court of Human Rights, it will help to the rapidly of judgement.

Besides the mentioned key issues, in the text of the protocol were also foreseen procedures for compliance of the Court's final judgment, a single nine-year term for judges as a guarantee to their impartiality, encouragement of friendly settlements and requirement for judgement interpretation. Another amendment of interest to be found in Protocol No.14 was a possible accession of the European Union (EU) to the ECHR. The EU had the necessary competence to accede as a party to the ECHR with the entry into force of the Lisbon Treaty, on 1 December 2009.¹⁷

3.1 The Position of Russian Federation on Protocol No.14

The entrance in force of the protocol was conditioned to the expressed consent of all Parties to be bound by the Protocol¹⁸. This condition explains the fact that Protocol No.14 was opened for ratification in Strasbourg on 13 May 2004 and entered in force on 1 June 2010. Russian Federation was the last state ratifying it on 18.02.2010.

The position of Russian Federation constitutes a situation of controversy from the signature to the ratification of Protocol No.14. When signing Protocol No. 14 the Russian Federation declared¹⁹ :“The application of the Protocol will be without prejudice to the process of improving the modalities of functioning of the Court of Human Rights ... with the understanding that procedural rules relating to examination of applications by the Court of Human Rights must be adopted in the form of an international treaty subject to ratification or to any other form of expression by a State of its consent to be bound by its provisions”.

3.1.1 Main Objections and the Ratification

When the Protocol was presented to the State Duma²⁰ as the competent body for ratification, it withheld consent. Although their objections seemed to be not exhaustive some of them were specified as following²¹:

- The finality of decisions by single judges on admissibility could jeopardise the principle of equal access to the Court, which would be incompatible with the Russian justice system (right to a fair trial).

¹⁵ *ibid*

¹⁶ European Conventions on Human Rights, as amended by Protocols Nos.11 and 14, Council of Europe Treaty Series No.5, available at echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/CONVENTION_ENG_WEB.pdf retrieved on 03.03.2012

¹⁷ Accession by the European Union to the European Convention on Human Rights Answers to frequently asked questions, 30 June 2011, 2, available at coe.int/t/dghl/standardsetting/hrpolicy/CDDH-UE/CDDH-UE_documents/EU_accession-QA_2011_en.pdf retrieved on 07.03.2012

¹⁸ Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention Strasbourg, 13.V.2004, Article 19, available at conventions.coe.int/Treaty/EN/Treaties/Html/194.htm retrieved on 17.02.2012.

¹⁹ *Advisory Report on the Application of Protocol No.14 to the European Convention on Human Rights and Fundamental Freedoms*, Netherlands International Law Review, 72, available at journals.cambridge.org/action/displayFulltext?type=1&pdfType=1&fid=5488932&jid=NLR&volumeId=56&issueId=01&aid=5488928, retrieved on 07.02.2012.

²⁰ The State Duma of the Federal Assembly of the Russian Federation, status para.1, available at politika.su/e/fs/gd.html

²¹ *Advisory Report on the Application of Protocol No.14 to the European Convention on Human Rights and Fundamental Freedoms*, Netherlands International Law Review, 72, available at journals.cambridge.org/action/displayFulltext?type=1&pdfType=1&fid=5488932&jid=NLR&volumeId=56&issueId=01&aid=5488928, retrieved on 07.02.2012.

- The new admissibility criterion requires not only a procedural but also a sub-stantive assessment of applications. This increases the chance that applicants' rights will be infringed at an early stage of proceedings.
- If the EU were to become a party to the ECHR, non-Member States of the EU would not have the same opportunity to bring cases before the Court of Human Rights as EU Member States.
- It is unclear how the proposed changes to the judges' terms of office would help the efficiency of the Court of Human Rights.
- The absence of a guarantee that a Russian judge would be a member of the Court hearing cases against the Russian Federation.

Through the chairman of Duma commented the protocol as different from Russian court procedure²², the facts showed the refusal was a response to perceived discrimination against Russia. Russian Federation is one of the largest providers of cases²³ to the Court of Human Rights and most of them are decided in favour of citizen. The causes of the friction between Russian Federation and the Court of Human Rights have been the permanent violation of ECHR and non-execution of Court of Human Rights decisions.²⁴

Such a case was *Burdov v. Russia* No.2²⁵ that exhausted the patience of Court of Human Rights. The Russian judge on the Court of Human Rights asserted to Russian Constitutional Court that failure to the court decision execution within the sixth months could lead to termination of Russian membership to the COE.²⁶ Although not immediately, and despite the debates of Russian Federation to achieve a more favourable judgement on Yukos' application²⁷, the State Duma voted on 15 January 2010 on ratification of Protocol No.14. As Russian Federation joined the other 46 member states, Protocol No.14 entered in force on 1 June 2010.

The system has been in full operation since June 2010 and is proving to be very effective. In 2011 the number of striking-out and inadmissibility decisions has increased by 31% compared to 2010, but the backlog continues to rise.²⁸

3.2 Protocol No.14bis

Protocol No.14bis was a result of the non-entry in force of Protocol No. 14. It was binding only to the parties that ratified it and was applied on temporary basis from its entry in force on 01 October 2009 to the entry in force of Protocol No.14.

Protocol No.14bis allowed the application of two procedural elements of Protocol No. 14 with respect to those States that express their consent²⁹:

- A single judge will be able to reject manifestly inadmissible applications, whereas now this requires a decision by a committee of three judges.
- The competence of three-judge committees is extended to declare applications admissible and decide on their merits where there already is a well-established case law of the Court.

²² December 21, 2006 Duma gives it the European Court, available at kommersant.com/p732043/r_500/State_Duma_European_Court, retrieved on 17.03.2012.

²³ ECHR Overview 1959-2011, 6-7, available at echr.coe.int/NR/rdonlyres/E58E405A-71CF-4863-91EE-779C34FD18B2/0/APERCU_19592011_EN.pdf retrieved on 14.03.2012.

²⁴ Bowring, Bill, *The Russian Federation, Protocol No.14 (and 14bis), and the Battle for the Soul of the ECHR*, Goettingen Journal of International Law 2 (2010), 607 available at birkbeck.academia.edu/BillBowring/Papers/268313/The_Russian_Federation_Protocol_No_14_and_14bis_and_the_Battle_for_the_Soul_of_the_ECHR retrieved on 20.02.2012.

²⁵ Case of BURDOV v. RUSSIA (No.2), 33509/04 (2009), Court of Human Rights

²⁶ Bowring, Bill, *The Russian Federation, Protocol No.14 (and 14bis), and the Battle for the Soul of the ECHR*, Goettingen Journal of International Law 2 (2010), 607-608, available at birkbeck.academia.edu/BillBowring/Papers/268313/The_Russian_Federation_Protocol_No_14_and_14bis_and_the_Battle_for_the_Soul_of_the_ECHR retrieved on 20.02.2012.

²⁷ *Ibid* 612

²⁸ Annual Report 2011 European Court of Human Rights Registry of the European Court of Human Rights Strasbourg, 2012, 5 para 3, available at echr.coe.int/NR/rdonlyres/219E9A92-716A-4337-99DE-053358F536B3/0/2011_Rapport_Annuel_EN.pdf retrieved on 17.03.2012

²⁹ Explanatory report Protocol No. 14bis to the Convention for the Protection of Human Rights and Fundamental Freedoms (CETS No. 204) available at conventions.coe.int/Treaty/EN/Reports/Html/204.htm, retrieved on 20.02.2012.

Conclusion

The ECHR is an international treaty signed and ratified by the 47 member states of the COE. It contains minimum standards and protects basic human rights and fundamental freedoms of everyone within the jurisdiction of any member state. There have 14 protocols amending ECHR in both recognizing additional rights and improving procedures.

Clearly, the entry into force of Protocol No.11 and Protocol No.14 has brought considerable changes to the original system. The first created a new full-time Court of Human Rights and the second introduced changes to the structure of the system in three main areas (a single judge is competent to declare inadmissible or strike out an individual application, added a new admissibility criterion, took measures for repetitive cases).

Protocol No.14 was objected by Russian Federation and the Duma explained some of the reasons to the objection. Although Russian Federation attempted to consider the protocol not in accordance of Russian court procedures and not clear to all changes, it appeared this objection was the result of the tense situation between the state and the Court of Human Rights. The ratification of Protocol No.14 by Russian Federation, leded the protocol's entry into force.

The ECHR should be adapted to the need of time and contain the necessary measures in protection of human rights and fundamental freedoms.

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