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The European Court of Human Rights: A Success Story?

by *Leo F. Zwaak & Therese Cachia*

IN HIS SPEECH TO THE 113TH MINISTERIAL SESSION HELD from November 5-6, 2003, in Chisinau, the capital of Moldova, the President of the European Court of Human Rights (Court), Luzius Wildhaber, stated that “the 38,000 applications which we expect to be lodged in 2004, the 46,000 or more that we anticipate in 2005, are indeed of concern.” What worried him even more was the accumulating backlog of substantial cases that cannot be dismissed as manifestly inadmissible, cases which raise a substantial issue under the Convention, are communicated to the respondent government, and thus give rise to an adversarial procedure culminating in a fully reasoned decision or judgment.

This alarming concern in 2003 about the functioning of the European system of protecting human rights is not new. The same concern gave rise to the reform of the supervisory mechanism enshrined in Protocol No. 11 of 1998 to the European Convention on Human Rights (Convention). In fact, more than a decade ago, it was already quite obvious that the European system would come under extreme pressure.

BACKGROUND

UNDER THE EUROPEAN CONVENTION ON HUMAN RIGHTS (in its original version), complaints could be brought against contracting states either by other contracting states or by individual applicants (individuals, groups of individuals or non-governmental organizations). Recognition of the right of individual application was, however, optional and it could therefore be exercised only against those states which had accepted it.

The complaints were first the subject of a preliminary examination by the European Commission of Human Rights, which determined their admissibility. Where an application was declared admissible, the Commission placed itself at the parties’ disposal with a view to brokering a friendly settlement. If no settlement was forthcoming, it drew up a report establishing the facts and expressing an opinion on the merits of the case. The report was transmitted to the Committee of Ministers of the Council of Europe.

Where the respondent State had accepted the compulsory jurisdiction of the Court, the Commission and/or any contracting state concerned had a period of three months following the transmission of the report to the Committee of Ministers within which to bring the case before the Court for a final, binding adjudication. Individuals were not entitled to bring their cases before the Court.

If a case was not referred to the Court, the Committee of Ministers decided whether there had been a violation of the Convention and, if appropriate, awarded “just satisfaction” to the victim. The Committee of Ministers also had responsibility for supervising the execution of the Court’s judgments.

The increasing case-load prompted a lengthy debate on the necessity for a reform of the Convention supervisory machinery, resulting in the adoption of Protocol No. 11 to the Convention. The aim was to simplify the structure, with a view to shortening the length of proceedings, while strengthening the judicial character of the sys-

tem by making it fully compulsory and abolishing the Committee of Ministers’ adjudicative role.

Under Protocol No. 11 to the Convention the existing, part-time Court and Commission were replaced by a single, full-time Court. The acceptance of individual petition and the acceptance of the Court’s jurisdiction became compulsory. With respect to individual petitions the Committee of Ministers did not play a role any longer. Responsibility for supervising the execution of judgments lies with the Committee of Ministers of the Council of Europe. The Committee of Ministers verifies whether states, in which a violation of the Convention is found, have taken adequate remedial measures to comply with the specific or general obligations arising out of the Court’s judgments.

HISTORICAL BACKGROUND TO PROTOCOL 11 OF THE CONVENTION

THE EVENTS OF 1989 AND 1990 IN EASTERN EUROPE following the dramatic fall of the former Soviet Union brought with them a vast change in the Council of Europe, in that there was a rapid increase in the number of its member states. In its approach to enlargement, the Council of Europe decided that ratification of the Convention shortly after joining the organization should be a condition for accession. Consequently, the Convention, to which twenty-two states had previously been party, was ratified in or after 1990 by nineteen new member states, most of them from central and eastern Europe. These developments were decisive for the ongoing discussion within the Council of Europe concerning a reform of the supervisory mechanism.

Since 1982, several proposals had been forwarded concerning the possibility of “merging” the European Commission on Human Rights (Commission) and the Court into a single body. Apart from the idea of “merging”, in 1990 there was a Dutch-Swedish initiative proposing that the opinions of the Commission under Article 31 (old)—in so far as individual applications were concerned—would be transformed into legally binding decisions. This led to a two-tier judicial system where the Commission would operate as a court of first instance from which individual applicants and states could be granted a right of appeal to the Court. However, no consensus was reached on this proposal.

Seeking a clear mandate for reform, different proposals were sent to the Committee of Ministers of the Council of Europe, which adopted Protocol No. 11 to the European Convention on Human Rights in 1994. This entered into force on November 1, 1998.

The main feature of Protocol No. 11 was that a new single permanent Court in Strasbourg, France, replaced the two existing supervisory organs, namely the European Commission on Human Rights and the European Court of Human Rights. This permanent Court was to perform the functions previously carried out by these organs. This meant that the Court would now take decisions on admissibility and attempt to bring the parties to a friendly settlement. All these functions were previously performed by the Commission, the Court, and the Committee of Ministers.

Furthermore, the jurisdiction of the new Court became mandatory. Since the right of individual petition also became mandatory the number of potential applicants, if calculated by reference to the population of the contracting states, grew from 451 million to 772 million.

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One of the great advantages of the reform to the controlling mechanism under the Convention is undoubtedly the direct access of the individual to the Court. The Committee of Ministers only retained its competence to supervise the implementation of the judgments of the Court, while its former competence to deal with individual applications declared admissible but not referred to the Court was abolished. The Committee's competence with respect to inter-state complaints remained unchanged. Since no transitional period was foreseen for the old Court, the new Court received all the cases that could not be completed by the old Court as a "dowry" on the date of entry into force of Protocol No. 11.

During the three years that followed the entry into force of Protocol No. 11, the Court's caseload grew at an unprecedented rate. The number of registered applications rose from 5,979 in 1998 to 13,858 in 2001, an increase of approximately 130 percent. Since 1993, the number of applications grew by over 500 percent. This is not solely the consequence of the accession of new member states, since individuals in older member states also increasingly turn to the Court. The system is seriously overloaded and, with the relatively limited resources available to it, the Court's ability to respond is in danger. It may also be observed that, when the reform leading to Protocol No. 11 was first conceived, this substantial and rapid enlargement of the Council of Europe and the impact it would have on the control machinery was not anticipated. Neither was it anticipated that a great number of cases concerning the same violations in relation to the same member state would be received.

It is quite an understatement to say that there is an imbalance between the input and output in Strasbourg. Since the new Court commenced, its activities have significantly increased. In 2003, the Court delivered 844 judgments. However, just under 39,000 applications are currently pending. Roughly 50 percent of the applications are disposed of by the Court within one year of registration, but a considerable number are not terminated within the 3-year target. Some cases are not disposed of until after a period of four to six years (for example, about 514 of the 4,719 applications registered in 1997). The foreseeable development of cases from the perspective of execution of judgments is also dramatic. There is every reason to suppose that the predicted increase in the Court's caseload will lead to a significant increase in the number of judgments sent to the Committee of Ministers for supervision of their execution.

PROCESS AND PROPOSALS FOR CHANGE

IT SEEMS THAT THE CONCERN ABOUT THE COURT'S CAPACITY to deal with the growing volume of cases has brought attention only to the Court system and not to the system of human rights protection as a whole, leading to proposals for change. In October 2002, the Committee of Ministers' Steering Committee for Human Rights (CDDH) issued a report setting out its interim conclusions on the proposals for reform. Among other things, the CDDH agreed to further consider whether to grant the Court the power to decline to examine applications that raise "no substantial issue" the European Convention. It also considered ways to filter applications without creating a separate division within the Court and how to handle repetitive cases. At its 112th Ministerial Session on May 14-15, 2003, the Committee of Ministers adopted the Declaration, "Guaranteeing the long-term effectiveness of the European Court of Human Rights," welcoming the final report (CM(2003)55) of the CDDH containing a set of concrete proposals in this regard. The final stage of the CDDH's work will end in April 2004 with the adoption of the Final Activity Report.

Undoubtedly, the strength and effectiveness of the European system of the protection of human rights lies in the right to individual petition. It is this direct access of the individual to an international organ competent to examine his/her complaint of a violation of one of the rights and freedoms recognized in the European Convention that has so far ensured a progressive development in the protection of fundamental rights within the domestic systems of the member states. This is certainly envisaged in the most recent situation within Turkey. If one considers the applications brought by individuals and the outcome of those applications, not only on an individual basis but also with regards to the effect of such decisions on the protection of fundamental rights within Turkey for all and not only for individual applicants, one cannot but conclude that this has produced a change towards better ensuring and affording that protection even on a domestic level. Due to the importance and effect of the right of individual petition, not only for the applicant but also for the domestic position, it would be a great pity if the European system changed in such a way so as to undermine or restrict the greater benefits of direct access of the individual to the Court simply to do away with the backlog that has been created.

On the contrary, proposals strengthening the possibilities for protection of the individual should be welcomed. For this reason, the proposal put forward by the Council of Europe's Commissioner for Human Rights should be considered to allow the possibility to lodge an application with the Court against one or more states parties in a case which raises a serious issue of a general nature. Additionally, the proposal to give the Commissioner the option to intervene as a third party in pending proceedings should be favorably considered. According to Article 38 of the Convention, the President of the Court may, in the interest of the proper administration of justice, invite any high contracting party which is not a party to the proceedings or any person concerned who is not the applicant to submit written comments or take part in hearings. As a third party, the Commissioner could give his opinion on the case at stake and also could be heard as an expert during the procedure.

A change in the system to ensure that applications are examined efficiently and effectively requires a thorough examination not only of the functioning of the Court but also of the functioning of the member states, the Committee of Ministers, and other mechanisms within the Council of Europe who, after all, share the same aim of ensuring protection of fundamental rights. It is incorrect to review the European system simply by reviewing the work of the Court since the European system is not made up solely of the Court. The Court was set up to be a measure of last resort, to be used only when all other measures have been exhausted and failed. The fact that the applications have increased multifold before the court only goes to show that these other mechanisms are failing. The European system was built on a "collaboration" system for the protection of human rights within which the member states and the Committee of Ministers were participants together with the Court.

Considering the existing admissibility criteria of the exhaustion of domestic remedies, the ever increasing number of applications that are found admissible, and for which judgment is given in favor of the applicant even though that applicant has already exhausted domestic remedies, can simply mean one thing - that those domestic remedies are not functioning well. This could be for a variety of reasons such as a lack of effective remedies that are made available to the individual, or, where they are made available, a lack of proper implementation and interpretation by the domestic courts, or even a lack of judicial activism on the part of the domestic courts.

In this regard, the recommendations that are being proposed by the Committee of Ministers and that are to be circulated to the member states may help in this regard. Such recommendations, which will deal with measures to be taken at the national level to improve domestic remedies, verify the compatibility of laws with the European Convention, and spread education on the Convention. However, they will be fruitless if they remain as simple recommendations and are not backed by a strong will to bring them into effect.

Considering the position in relation to the implementation of the judgments delivered by the Court, and the time taken by the member states to implement such judgments, one cannot but question the obligation of the Committee of Ministers in this respect. The implementation of such judgments not only seems to take time but also seems to create an effect towards the applicant alone, even if the domestic reality shows that several others have or are suffering the same violation. In seeking to strengthen the effective implementation of judgments, the CDDH has considered a proposal enabling the Committee of Ministers to institute proceedings before the Grand Chamber to seek a finding by the Court that the state has infringed its obligation under Article 46(1) of the Convention, where a state persistently refuses to comply with a judgment. But would this proposal bring about anything that does not already exist? Or would it simply shift more work onto the Court from the Committee of Ministers? After all, once the Court has already delivered a judgment against a member state, then that state has already been found to be in violation of the Convention and, from then on, it is completely within the powers of the Committee of Ministers to ensure its implementation. Obtaining another declaration from the Court will not attain anything other than increase the caseload of the Court unnecessarily when the Committee already possesses the means to ensure that a member state complies with its obligations.

The better implementation of the court's judgments by the Committee of Ministers and a stronger political will on the part of the Committee of Ministers to redress a situation which is evidently violative in respect to several persons within the jurisdiction of one of the member states would certainly positively effect the situation created by the Turkish and Russian applications. To a certain extent these applications stalled the Court's work in relation to several other applications presented by individuals from other member states. The majority of the Turkish and Russian applications and the Russian cases mainly deal with serious violations of the Convention (right to life, torture, inhuman treatment, questions of state responsibility). These cases will take a lot of the Court's time because of examination on the spot and the hearing of witnesses is very time consuming.

Should these obligations be considered more in depth and implemented more effectively, the several number of applications presented to the Court should decrease in the case of individuals seeking redress from the Court only when domestic measures have failed. To this extent, the failure of the system established under Protocol 11 does not lie in the system nor in the increasing number of member states.

INTRODUCING A FILTERING MECHANISM

TWO OF THE MAIN PROPOSALS CONSIDERED BY THE CDDH in its Interim Activity Report of November 26, 2003 will be considered here in some detail since it is felt that they directly affect the individual's direct access to the Court.

First, the CDDH was convinced of the usefulness of reinforcing the filtering capacity of the Court. It considered that the new figures presented to it on the number of cases currently pending before a Chamber (as of October 1, 2003, there were some 15,300 pending

Chamber cases) clearly demonstrated that a serious problem exists and confirmed the need to find satisfactory solutions not only to alleviate the workload of the registry but also that of the judges, considering that the work carried out on filtering by the judges has already had a negative impact on their capacity to deal with Chamber cases.

In this regard, the CDDH considered two variants. The first requires that elected judges will be assisted by "assessors" (a term that could be replaced, for example, by that of "advisers-rapporteurs"), it being understood that, in all cases, only elected judges would be empowered to make decisions. This would lead to a new composition requiring one elected judge and two "assessors" with the competence to filter applications given to the elected judge who is to examine all applications after considering a report prepared by one of the two "assessors." Following this examination, the elected judge could decide, on his or her own, that the application is inadmissible or transmit it to a Committee or Chamber.

The second variant considered puts such competence only upon the "single judge" in the text of the Convention, thereby leaving it up to the Court and the Registry to settle the details of the assistance to be provided to that judge. The CDDH agreed to the creation of a filtering mechanism on condition that it fully retain the judicial character of the Court, thereby agreeing to the principle according to which inadmissibility decisions would be taken by a single judge who is not to be the "national" judge of the state concerned. The CDDH also agreed that the single judge should be granted assistance in this function, without expressing at this stage a preference between a system of "assessors" expressly mentioned in the Convention or assistance that would be provided by the Registry of the Court.

In this proposal, the Court will have a separate filtering mechanism operated by a different group of judges. Commenting on this mechanism, Paul Mahoney, the Registrar of the Court, stated that this filtering process "must be based on simple, clear, easily applied rules" so as to provide assurance of objective treatment to the thousands of disappointed applicants. He rightly points out that if the filtering procedure is to exercise discretion in light of the particular circumstances, the basic aims of a mass filtering are no longer met. However, one asks, which are those clear, easily applied rules? We would not be able to think of any other than those which are mentioned in Article 35 of the Convention.

Clearly the aim of the proposed changes is to decrease the number of applications that have to be considered in depth; but when one is speaking of violations of fundamental rights, which cases are to be filtered out? According to Mahoney, only a little more than 20 percent of the 844 judgments delivered by the Court in the year 2003 concerned substantial or new issues under the Convention. The proposal of the CDDH is, in his opinion, too limited in its effect. In his point of view, the Court is not set up for adjudicating every alleged interference with a guaranteed right in the Convention country and then awarding carefully assessed relief for every single instance of violation shown to exist, whether or not the case involves what one might call a wider public-policy issue of human rights protection in Europe. This is, in our opinion, a rather formalistic approach of the existing problem which diminishes the importance of the individual that the system seeks to protect in the first place. In his approach, Mahoney does not take into account one basic fact—that the applications considered by the Court and judged in favor of the individual are all cases whereby the domestic remedy has failed.

In view of this, the threshold for bringing a case to the Court could only be made higher if every citizen of the contracting parties would be able to find an effective and real remedy against an alleged violation of the Convention at the domestic level. In this respect, the

Court is not so much the victim of too many applicants but a victim of a general reluctance of the member states to take the European Convention seriously. The Strasbourg Court should only be used as an *ultimum remedium*, but this can only be true if all other remedies and mechanisms are effectively implemented and if the parties concerned adhere to their obligations.

In its response to the Interim Report of the CDDH on February 2, 2004, the Court stated that “As to the filtering proposals currently on the table, in so far as no immediate or future delegation of decision-making authority for the initial screening out of obviously inadmissible cases is provided for, they do not correspond to the Court’s view of what will in the longer term be necessary to keep the system afloat.” The Court unequivocally maintained its position that, ultimately, a separate filtering body will be required. Whatever the outcome of this proposal may be, to us it seems that a part of this work is almost identical to the work formerly entrusted to the European Commission of Human Rights.

INTRODUCING NEW ADMISSIBILITY CRITERIA

APART FROM THE FILTERING PROCESS, the CDDH was also instructed to pursue work on the proposal to introduce a new admissibility requirement. Since there was no agreement between the delegates on the text of this amendment, the CDDH has tried to find a new formulation that would reinforce the principle of subsidiary. It began by examining a new proposal made by the Austrian delegation proposing an amendment to Article 35(3) of the Convention. The proposal suggested the following amendment:

The Court shall declare inadmissible any individual application submitted under Article 34 [Proposal 1(b)] if the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention 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 considered by a domestic tribunal applying the Convention and its case law; [Proposal 2(b)] if the applicant has not suffered a significant disadvantage, notably in view of the examination of the case by the national authorities, unless the Court considers that respect for human rights as defined in the Convention and the protocols thereto requires that the application be examined on the merits.

If adopted, this proposal would mean that the Court would no longer issue rulings on all cases that meet the current admissibility criteria. Instead, the Court would only rule on cases that raise “substantive” issues under the European Convention. Individuals whose complaints the Court considers raise “no substantive issue” would not be able to get a ruling by the Court about whether their Convention rights have been violated, even if the case falls within the current admissibility criteria. Both proposals seem to suggest an even further limitation in that both require the individual to have suffered “a significant disadvantage.” What this element will require is rather obscure, seeming to distinguish between the severity of violations and their redress at a time when it was thought to have been accepted that each and every violation of a right is to be equally condemned. The phrasing of proposal 2, “*notably in view of the examination of the case by the national authorities,*” indicates that the CDDH might be of the opinion that it could make a difference for admission purposes if the applicant’s case had received appropriate attention at the domestic level.

This would certainly mark a radical departure from the current system in which the individual is the center of attention. The rationale behind this proposal is clear. It offers the Court the possibility to get rid of repetitive cases, such as the routine application of existing case law, which deals exclusively with the unreasonable length of proceedings. But should such advantage for the caseload of the Court be considered if it is clearly to the detriment of the individual? From the individual’s point of view, he/she who has an arguable claim for which redress is seemingly not offered at the domestic level is left only with a complaint at the international level. Is this redress now to be taken away simply to solve a backlog of cases?

Do we need an extra admissibility requirement? From the formulation of Article 35(2)(b) of the Convention, it might be inferred that the words “substantially the same matter” also cover an application that is otherwise identical but is lodged by another applicant. The provision is, however, to be interpreted in the sense that it is only directed against identical applications by the same applicant. It would not be in conformity with the purpose of the Convention to provide individual legal protection if an application from X, who considers himself to be the victim of a violation of the Convention, would not be admitted on the grounds that an identical violation in relation to applicant Y is already being examined or has already been examined. Before taking such a drastic step of rejecting applications which fulfil the admissibility requirements, other measures should be explored. A system should be developed to force the states parties to abide by the judgements of the Court and to ensure the execution of the judgements.

The Court, in its response to the Interim Report, stated that it is sympathetic to the wish to reinforce the principle of subsidiary and to adapt any new admissibility condition accordingly. However, the majority of the Court has preferred to propose introducing Article 37 criterion, which allows the Court to strike a case out of the list of cases in situations where: (a) the applicant does not intend to pursue his application; or (b) the matter has been resolved; or (c) for any other reason established by the Court, it is no longer justified to continue the examination of the application. However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the protocols thereto so requires.

If those concepts are incorporated into Article 35(3), the proposed text could read as follows (proposals in bold):

The Court shall declare inadmissible any individual application submitted under Article 34 **where it considers that the application is incompatible with the provisions of the Convention or the Protocols thereto, or that respect for human rights as defined in the Convention and the Protocols thereto does not require the examination of the application, or that the application is manifestly ill-founded or an abuse of the right of application.**

According to the Court, this represents a concept which, in the majority’s opinion, is workable from a legal point of view once its parameters have been clearly defined. In any event, this criterion, perhaps unlike the “significant-disadvantage” test, would make it possible for the Court to hold states accountable in all circumstances for failing to fulfil their basic human rights obligations under the Convention and its Protocols and, notably, where there is no domestic remedy.

CONCLUSION

THE LAST TEN YEARS OF THE DEVELOPMENT of the European Court of Human Rights is a very cumbersome picture with respect to

Because access to abortion is an important component of healthcare and family planning, Russia should defer to CEDAW. CEDAW fully articulates women's rights to access healthcare and family planning services. Although the CRC also addresses the rights of mothers to prenatal and postnatal care, CEDAW is the international authority on this area of law. Moreover, both CEDAW and the CRC contain provisions that say they should not conflict with any other international law or national law that is more conducive to realizing the rights that the treaty seeks to embody. For Russia to follow the CRC in good faith it must look to CEDAW for all obligations related to family planning and women's access to healthcare. Finally, the legislative history to the CRC shows that the Preamble clause on which Russia has based its interpretation was meant to be subject to other treaties governing the same subject matter. The clause was purposefully silent on abortion. Hence, CEDAW is the ruling authority on women's right to abortion.

Russia's interpretation of the CRC is not consistent with the spirit of either convention. The goal of both conventions is to provide for the rights and health of women and children, and Russia's plan undermines its ability to provide for these. By narrowly focusing on restricting access to abortion, Russia burdens the health and economic welfare of women and families through unwanted pregnancies and dangerous botched abortions. At the same time, Russia has neglected to provide adequate access to and education on pregnancy prevention or welfare resources to support the new children.

CONCLUSION

RESTRICTING ACCESS TO ABORTION ALONE will not decrease heavy reliance on abortion in Russia. Russian women have relied on abortions for years and will continue to do so whether they are legal or not. Instead, Russia must focus on providing full access to affordable and reliable contraception and reproductive health education. The CRC Committee's 1999 Concluding Observations on Russia stress similar goals, recommending that Russia ensure the effectiveness of measures taken to educate adolescents on contraception and STDs, strengthen reproductive health and family planning services, and take further steps to prevent teenage pregnancy and abortion. Moreover, as a country with a skyrocketing HIV/AIDS rate (the Commonwealth of Independent States has the fastest-growing HIV/AIDS rate in the world), it is imperative that Russia focus on health education and develop prevention and access networks.

With greater power, voice, and freedom, women would likely find ways to control their reproductive health without relying on such invasive procedures as abortion. Russia must take action to provide women with greater control over their education, their sexual health and their family lives. In order to reduce reliance on abortion, women need the education and ability to plan their families in a reliable and noninvasive way. It is likely that the transition away from abortion to modern forms of contraception will be long and complicated. The Abortion Decree and Family Code Amendment, which offer no accompanying legislation to provide additional family planning resources, will only make this process more difficult and painful. *HRB*

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the workload and the duration of the time necessary to finally decide cases. However, now it seems that the proposed reform of the existing system would leave claimants whose applications are rejected on the above considered basis without a remedy at all. Then, where and who will offer that lost remedy? If the Court decides to examine the merits of a case and finds a violation, it may decide under Article 41 of the Convention that the respondent state should pay just satisfaction to the victim of the violation. Under the new proposals, that possibility would no longer exist when the Court decides to reject a case, notwithstanding the fact that the applicant has fulfilled the current admissibility requirements.

In the introduction of our contribution we opened with the statements made by the president of the European Court of Human Rights. Let us conclude with a statement made by Judge Antônio Augusto Cançado Trindade, President of the Inter-American Court of Human Rights, at the hearing of the European Court of Human Rights on the occasion of the opening of the 2004 judicial year in Strasbourg on January 22:

At procedural law level, one of the basic issues dwelt upon by both Courts has been precisely that of the access to justice at [the] international level, achieved under the two Conventions by means of the operation of the respective provisions on the international jurisdiction of the two Human Rights Courts and on the right of individual petition. I regard those provisions of such a fundamental character—as true fundamental clauses (*cláusulas pétreas*) of the international protection of human rights—that any attempt to undermine them would threaten the functioning of the whole mechanism of protection under the two regional Conventions. They constitute the basic pillars of the mechanism whereby

the emancipation of the individual vis-à-vis his own State is achieved. This outlook grows in importance for having come at a time when the establishment of a new international human rights Tribunal (an African Court on Human and Peoples' Rights) under the 1998 Protocol to the African Charter on Human and Peoples' Rights appears forthcoming.

We cannot do more than strongly underline this firm statement, which does justice to those who are seeking justice, those who were disregarded or disappointed at the domestic level and those who have placed their hope in seeking justice at an international level. A proposal made by Mahoney for the introduction of a pilot-judgment for dealing with situations generating repetitive cases is worth considering. Under this proposal, the Court would take up a test case and suspend the examination of all similar applications. If a violation of a structural or organizational nature is found, the respondent state would be obliged, in order to execute the judgment, not only to eliminate the source of the violation for the future but also to make available a retroactive national remedy to provide appropriate relief for other victims of the violation, including in particular persons who had lodged an application with the Court in Strasbourg.

This proposal should be explored further because it offers the original victim a measure of redress while, at the same time, it creates a structure that will not overload the European Court of Human Rights with applications that deal with the same issue often in relation to the same member state. It is proposals for change that do not restrict the right to individual petition that may lead to the final conclusion that the European Court of Human Rights will be a success story in the next ten years and thereafter, since it is this very element of the European system that has made it successful and that has inspired hope for the weakest - the individual. *HRB*