General information:
Council of Europe’s reaction in relation to the attack of Russia against Ukraine


Committee of Ministers in relation to the Russian Federation
- Condemnation (24.2.2022)
- Suspension of rights (25.2.2022)
Condemnation (24.2.2022)

In a decision adopted today, at the end of an extraordinary meeting which brought together the representatives of the 47 Council of Europe member states, the Committee of Ministers:

• condemned in the strongest terms the armed attack on Ukraine by the Russian Federation in violation of international law;

• decided to examine without delay, and in close co-ordination with the Parliamentary Assembly and the Secretary General, the measures to be taken in response to the serious violation by the Russian Federation of its statutory obligations as a Council of Europe member State;

• urged the Russian Federation to immediately and unconditionally cease its military operations in Ukraine;

• condemned the recognition by the Russian Federation of the Ukrainian oblasts of Donetsk and Luhansk as independent entities;

• reiterated their unwavering commitment to the independence, sovereignty and territorial integrity of Ukraine within its internationally recognised borders;

• expressed their support to Ukraine and their solidarity with its people;

The Committee of Ministers also agreed to hold a further extraordinary meeting on 25 February 2022 with a view to considering measures to be taken, including under Article 8 of the Statute of the Council of Europe. https://www.coe.int/en/web/portal/-/situation-in-ukraine-decisions-by-council-of-europe-s-committee-of-ministers

25.02.2022
K. Lörcher
Suspension of rights (25.2.2022)

In line with the Statute of the Council of Europe, the Committee of Ministers has today **decided to suspend** the Russian Federation from its **rights of representation** in the Committee of Ministers and in the Parliamentary Assembly with immediate effect as a result of the Russian Federation’s armed attack on Ukraine. The **decision** adopted today means that

- the Russian Federation **remains** a member of the Council of Europe and **party to** the relevant Council of Europe conventions, including the European Convention on Human Rights.
- The judge elected to the European Court of Human Rights in respect of the Russian Federation also **remains** a member of the Court, and applications introduced against the Russian Federation will continue to be examined and decided by the Court.

**Suspension is not a final measure** but a temporary one, leaving channels of communication open.
ECtHR - Recent developments

Klaus Lörcher
ETUC Fundamental Rights and Litigation Advisory Group
25 February 2022 (online meeting)
Overview

• (Amending) Protocol No. 15
• Statistics
• Further developments
(Amending) Protocol No. 15

Reduction of time-limit to four months
Subsidiarity / margin of appreciation
Further amendments
Entering into force

• Protocol No. 15 to the European Convention on Human Rights has been signed and **ratified by all 47 member States** of the Council of Europe.

• This text amending the Convention entered into force on **1 August 2021**, but provided for a **transition period** before the change of **time-limit** became effective.
Reduction of time-limit to **four** months

• As of **1 February 2022** the time-limit for submitting an application to the European Court of Human Rights is **four months** following the final domestic judicial decision in the case, which is usually a judgment delivered by the highest court in the country concerned. The time-limit was **previously six months**.

• This **new time-limit is not retroactive**: it does not apply to applications in which the final domestic decision was taken prior to 1 February 2022. In other words, it will only apply to applications in which the final domestic decision is given from 1 February 2022 onwards.
Subsidiarity / margin of appreciation
- General -

- Of principal (and possibly dangerous) nature, this Protocol amends the Preamble to the Convention, which now includes a reference to
  - the subsidiarity principle and to
  - the margin of appreciation doctrine.

- Wording of new recital:
  - "Affirming that the High Contracting Parties,
  - in accordance with the principle of subsidiarity, have the primary responsibility to secure the rights and freedoms defined in this Convention and the Protocols thereto, and that in doing so they
  - enjoy a margin of appreciation, subject to the supervisory jurisdiction of the European Court of Human Rights established by this Convention,“

- In accordance with Article 8, paragraph 4 of the Protocol, no transitional provision relates to the modification in the Preamble, which entered into force in accordance with Article 7 of the Protocol. (1.8.2021)
Subsidiarity / margin of appreciation
- Explanatory report -

• 7. ... It is intended to enhance the transparency and accessibility of these characteristics of the Convention system and to be consistent with the doctrine of the margin of appreciation as developed by the Court in its case law. ...

• 8. [provide an effective remedy before a national authority for everyone whose rights and freedoms are violated.]

• 9. The jurisprudence of the Court makes clear that the States Parties enjoy a margin of appreciation in how they apply and implement the Convention, depending on the circumstances of the case and the rights and freedoms engaged.

• This reflects that the Convention system is subsidiary to the safeguarding of human rights at national level and that national authorities are in principle better placed than an international court to evaluate local needs and conditions.

• The margin of appreciation goes hand in hand with supervision under the Convention system. In this respect, the role of the Court is to review whether decisions taken by national authorities are compatible with the Convention, having due regard to the State’s margin of appreciation.
Subsidiarity / margin of appreciation
- First evaluation -

• As Janneke Gerards discusses in her blog in this series, there has been an interesting academic debate as to whether the Court’s jurisprudence since the Brighton Declaration has in fact proved to be more deferential to states.

• She argues that there is no particular evidence of this, and that the development of the Court’s case-law is much more nuanced and impacted by a range of different factors.

• For these reasons, it is hard to see that this aspect of Protocol 15 will have much import for applicants.

Subsidiarity / margin of appreciation
- Further evaluation -

**Elements** which might influence the Court’s approach

- It is not an operative provision within the corpus of den Convention, it is *‘only’* a recital of the Preamble
- It is clear that the whole debate around the formulation of the recital referred to the fact that the Court had already developed both concepts in its jurisprudence
- According to the explanatory report it is aimed to *‘enhance the transparency and accessibility’* of these characteristics
- **Conclusion**: The case law could just remain as it stands (sufficiently problematic), but one never knows ...
Further amendments

• Of more technical nature, there are further changes to the Convention:
  • concerning the admissibility criterion of “significant disadvantage”, the second condition, namely that a case which has not been duly considered by a domestic tribunal cannot be rejected, has been amended and this proviso is now deleted;
  • the parties to a case may no longer object to its relinquishment by a Chamber in favour of the Grand Chamber;
  • candidates for a post of judge at the Court must be less than 65 years of age at the date by which the list of three candidates has been requested by the Parliamentary Assembly.
Statistics 2021

Applications pending (per year)
Applications 2021 compared to 2020
Applications pending (31/12/2021) – (high case-count) States
Applications pending (per year)

Chart 2 Applications pending before a judicial formation per year

Analysis of statistics 2021
K. Lorcher
## Applications 2021 compared to 2020

### 1. Applications allocated to a judicial formation

<table>
<thead>
<tr>
<th></th>
<th>2021</th>
<th>2020</th>
<th>+/-</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applications allocated</td>
<td>44250</td>
<td>41700</td>
<td>6%</td>
</tr>
</tbody>
</table>

### 3. Applications decided

<table>
<thead>
<tr>
<th>Decision Type</th>
<th>2021</th>
<th>2020</th>
<th>+/-</th>
</tr>
</thead>
<tbody>
<tr>
<td>By decision or judgment</td>
<td>36092</td>
<td>39190</td>
<td>-8%</td>
</tr>
<tr>
<td>- by judgment delivered</td>
<td>3131</td>
<td>1901</td>
<td>66%</td>
</tr>
<tr>
<td>- by decision (inadmissible or struck out)</td>
<td>32961</td>
<td>37289</td>
<td>-12%</td>
</tr>
</tbody>
</table>

### 4. Pending applications

<table>
<thead>
<tr>
<th></th>
<th>31/12/2021</th>
<th>1/1/2021</th>
<th>+/-</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applications pending before a judicial formation</td>
<td>70150</td>
<td>62000</td>
<td>13%</td>
</tr>
<tr>
<td>- Chamber and Grand Chamber</td>
<td>30600</td>
<td>23300</td>
<td>31%</td>
</tr>
<tr>
<td>- Committee</td>
<td>31850</td>
<td>34100</td>
<td>-7%</td>
</tr>
<tr>
<td>- Single-Judge formation</td>
<td>7700</td>
<td>4600</td>
<td>67%</td>
</tr>
</tbody>
</table>
Pending applications – High case-count States

For more information see: Analysis of statistics 2021
Pending applications – High case-count States

• A preliminary evaluation (by Kushtrim Istrefi; https://www.echrblog.com/2022/02/the-court-in-2021-worrying-facts-and.html) It is worrying that, just like in the previous years (see here and here) more than 75 % of applications were brought against 5 states only. These facts and figures suggest that the number of cases before the Court cannot be reduced only by reforming the 'machinery'. A more meaningful and holistic analysis is needed to look at the causes and types of violations, and how to ensure that all States, and in particular the 'usual suspects' that top the number of applications, take seriously the obligation to respect human rights, as enshrined in Article 1 ECHR.

• For an analysis of root causes in relation to the articles concerned the statistics in the period from 1959 – 2021 show that out of the 345 ECtHR’s judgments finding violations in relation to Article 11 ECHR the Court found violations in relation to 5 States as follows: Russia: 79; Turkey 111, Ukraine 10; Romania 6; Italy 3. Violations by Article and by State 1959-2021
Further developments
New case processing ("impact") strategy

• A prioritisation policy has been pursued to speed up processing times and to dispose of the most important, most serious and most urgent cases. The Court has established seven categories, ranging from urgent applications to those that are manifestly inadmissible.

• Some important cases may, however, be found in the intermediate categories, for which processing may take between five and six years. These are Chamber cases
  • of particular importance for the development of the human rights protection system and
  • which raise new questions concerning the interpretation and application of the European Convention on Human Rights.

• These “impact” cases, are at the heart of the Court’s new strategy and will be identified on the basis of certain predefined criteria.

• The processing of all the other cases (which are neither priority nor “impact” cases) will in future be dealt with by three-judge Committees rather than seven-judge Chambers.
Specific procedures

Interim measures in the case of Polish Supreme Court judge’s immunity:

• The Court asked that the Government ensure that the proceedings concerning the lifting of Mr Wróbel’s – a Supreme Court judge – judicial immunity comply with the requirements of a “fair trial” as guaranteed by Article 6 § 1 of the European Convention on Human Rights, in particular the requirement of an “independent and impartial tribunal established by law”, and that no decision in respect of his immunity be taken by the Disciplinary Chamber of the Supreme Court until the final determination of his complaints by the European Court. (08.02.2022, (application no. 6904/22)

Protocol No. 16 (request for advisory opinion):

• Request for an advisory opinion under Article 29 of the 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 rejected as not within its competence (15.09.2021)

Thank you very much for your attention.

For further information about individual cases before the ECtHR, see

https://www.hugo-sinzheimer-institut.de/faust-detail.htm?sync_id=HBS-008205

at the moment, only until 30.9.2021; for the current situation the general homepage is available

https://hudoc.echr.coe.int/eng#{%22documentcollectionid2%22:[%22GRANDCHAMBER%22,%22CHAMBER%22]}