Pamphlet No. 7

MINORITY RIGHTS UNDER THE EUROPEAN CONVENTION ON HUMAN RIGHTS

Summary: The European Convention on Human Rights is an international treaty that sets out fundamental rights for the benefit of persons within the European region. Persons claiming to be the victim of a violation of these rights by a State Party to the treaty may apply to the European Court of Human Rights, in Strasbourg, for redress. The Convention does not include specific provisions on minorities, but rights to equal treatment and non-discrimination may reflect many minority concerns. Applications for redress under the Convention are heard by the Court and may result in a legally binding judgement.

Introduction

The European Convention on Human Rights and Fundamental Freedoms (ECHR) entered into force in 1953, inaugurating the first regional human rights system. The ECHR has been revised several times through a series of protocols. In 1998, the European Court of Human Rights became the first permanent human rights court in the world. All of the member States of the Council of Europe are parties to the Convention, with the exception of Armenia and Azerbaijan, which are expected to ratify the Convention in the near future. (A list of States Parties is provided at the end of the pamphlet.) The right of individual petition is inherent in the Convention system, and all of the Court's judgements are legally binding on States Parties.

The 41 judges of the Court are elected by the Parliamentary Assembly of the Council of Europe for renewable six-year terms. Cases are heard by Chambers of seven judges; important cases may be referred to a Grand Chamber of seventeen judges. The execution of the Court's judgements is overseen by the Committee of Ministers, which has the authority to suspend or expel a State from the Council of Europe if the State does not comply with a Court judgement.

In some circumstances, an applicant may be awarded legal aid by the Court and may also recover expenses incurred during the preparation of a case, but this assistance is only available after the respondent government gives its opinion on the admissibility of an application. Unlike in some domestic legal systems, you cannot be burdened with the legal costs incurred by the State against which you brought a claim.

The Strasbourg system (so called because the Court and other institutions are located in Strasbourg, France) has considered over 40,000 individual cases and approximately 20 interstate cases, and its jurisprudence is enormous. This summary outlines only the major issues that should be considered by those who wish to raise issues of particular concern to minorities before the Court. Although legal counsel is technically not required, you should seek professional legal advice if you decide to bring a case under the Convention.

Rights under the European Convention on Human Rights

The ECHR contains no minority rights provision akin to Article 27 of the International Covenant on Civil and Political Rights. Therefore, there is no direct way for members of minority groups to claim minority rights before the European Court of Human Rights. Nevertheless, a number of rights guaranteed by the ECHR are relevant to minorities. The European Court of Human Rights also has expertise on minority rights based on the application of the ECHR, which has been applied with respect to the 43 member States throughout the Council of Europe. (Although it contains no complaints mechanism for individuals or groups, the Council of Europe's 1995 Framework Convention for the Protection of National Minorities is discussed in Pamphlet No. 8.)

At present, the only specific reference to minorities is to be found in Article 14 of the ECHR:

"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

Although "national minority" is undefined, it is contrary to the ECHR to treat "any person, non-governmental organization or group of individuals" in a discriminatory fashion with respect to one of the listed grounds without reasonable and objective justification. Article 14 is not a free-standing right to non-discrimination, and it may be raised only in connection with the alleged violation of another Convention right. (A new Protocol to the ECHR, No. 12, was opened for ratification in November 2000. When it enters into force, it will create a general prohibition against discrimination in the application of any rights guaranteed by law or by any public authority.)

Discrimination is not limited only to those cases in which a person or group is treated worse than another similar group. It may also be discrimination to treat different groups alike: to treat a minority and a majority alike may amount to discrimination against the minority. Moreover, the European Court of Human Rights has held that if a State takes positive measures to enhance the status of a minority group (for example, with respect to their participation in the democratic process), the majority can not claim discrimination based on such measures. In general, "a balance must be achieved which ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position". (It is possible that future decisions might examine the practical effect and impact of a law, rather than only whether it appears non-discriminatory on its face, but there is no solid body of law on this point as yet.)

A great number of cases under the ECHR have dealt with **linguistic rights**, but the Strasbourg institutions have consistently held that there is no right to use a particular language in contacts with government authorities. In the context of judicial proceedings, however, everyone has the right to be informed promptly, in a language he/she understands, of the reasons for arrest (Article 5.2) and the nature of any criminal charges

(Article 6.3.a). There is also a right to a free interpreter if a defendant cannot speak or understand the language used in court (Article 6.3.e).

The use of a minority language in private or among members of a minority group is, however, protected by the right to **freedom of expression** guaranteed under Article 10. Thus, minorities have a right to publish their own newspapers or use other media, without interference by the State or others. The State must allow the minority group free expression, even if this calls into question the political structure of the State.

"[The] limits of permissible criticism are wider with regard to the government than in relation to a private citizen or even a politician. In a democratic system the actions or omissions of the government must be subject to the close scrutiny not only of the legislative and judicial authorities but also of public opinion. Moreover, the dominant position that the government occupies makes it necessary for it to display restraint in resorting to criminal proceedings, particularly where other means are available for replying to the unjustified attacks and criticisms of its adversaries."

Another means of protecting the minority's identity is through **education of children** (Article 2, Protocol 1) belonging to the group. However, there is no right to mother-tongue education under the ECHR, unless it previously existed and the State then tries to withdraw it. Refusing to approve schoolbooks written in the minority's kin-State might be a breach of the right to freedom of expression. Even when the books might give the kin-State's view of history and culture, the government must "show that the undisputed censorship or blocking of the books was done in accordance with law and pursued a legitimate aim, such as the prevention of disorder. It would then be for the respondent government to show that the censorship measures were necessary in a democratic society".

The individual right to **freedom of religion** (Article 9) includes the right to manifest that religion, which allows a minority the necessary degree of control over community religious matters. The Court has held that the State must not interfere in the internal affairs of the church: "freedom of thought, conscience and religion is one of the foundations of a 'democratic society' within the meaning of the Convention. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it".

The State may limit manifestation of a minority's religion only for reasonable and objective reasons. Furthermore:

"where the organization of the religious community is at issue, Article 9 must be interpreted in the light of Article 11 of the Convention which safeguards associative life against unjustified State interference. Seen in this perspective, the believer's right to freedom of religion encompasses the expectation that the community will be allowed to function peacefully, free from arbitrary State intervention. Indeed, the autonomous existence of religious communities is indispensable for pluralism in a democratic society and is thus an issue at the very heart of the protection, which Article 9 affords. It directly concerns not only the organization of the community as such but also the effective enjoyment of the right to freedom of religion by all its active members. Were the organizational life of the community not protected by Article9 of the Convention, all other aspects of the individual's freedom of religion would become vulnerable".

Minority groups need to be able to **participate effectively in cultural, religious, social, economic and public life** (Article 11 and Protocol 1, Article 3). Formal or *de facto* exclusion from participation in the political processes of the State is contrary to the democratic principles that the Council of Europe espouses. It is the essence of democracy to allow diverse political projects to be proposed and debated, even those that call into question the way a State is organized, provided that they do not undermine democracy or human rights.

According to the Court, "a minority group is in principle entitled to claim the right to respect for the particular life-style it may lead as being 'private life', 'family life' or 'home'" under Article 8 of the Convention. Several cases involving the Roma and the indigenous peoples of northern Europe have sought to raise such a claim, although no such application has yet succeeded.

Filing an Application

To lodge a case successfully with the Court, an applicant has to fulfill certain admissibility criteria. Most complaints are dismissed at the admissibility stage. Since a complaint cannot be lodged twice on the same facts, it is imperative that the complaint meets the criteria on the first application.

The Court has its own application form (available from the Registrar of the Court in several languages) that must be completed and returned to the Court. Besides the personal details of the applicant and his or her legal representative, the Court requires:

- a detailed account of the facts
- detailed submissions on the Convention rights allegedly violated
- evidence of the remedies already sought at the national level, including dates and details of judgements
- the remedy sought from the Court

Copies of all supporting documents must be included with the application. The Court cannot accept anonymous complaints; the name of the applicant cannot be kept from the State. The proceedings of the Court are public, although confidentiality may be maintained in appropriate cases by referring to an applicant only by initials. States have an obligation not to obstruct the application and to cooperate with the Court in its investigation.

To initiate proceedings under the European Convention, you must allege a violation of one or more rights guaranteed under the Convention or one of its Protocols by a State Party. The Court may only receive complaints against a State. The States concerned are those listed at the end of this pamphlet. A complaint may involve action taken by the State itself or by one of the organs of the State, such as the armed forces, police forces, courts, or other public bodies. Only rarely has the Court allowed complaints where a private party has caused the harm. Those involved instances when the State had delegated a public function to the private body, and when it was the duty of the State to deter such actions by third parties.

The ECHR protects everyone within the jurisdiction of the State. The nationality of the applicant is not important; indeed, claims may even be made by stateless persons. An

application may be brought if action by one State may result in a violation of rights in another State, even if the latter is not a party to the ECHR. The most common example of this situation is when a person seeks to prevent deportation or extradition to a State in which there is a danger of torture or death.

The "Victim" Requirement

To file a case under the Convention, the complainant must have suffered personally from the alleged violation. This might be as a direct result of State action, for example, if the applicant personally suffered treatment amounting to torture or an interference with his/her right to religious freedom. Violations may also cause personal harm to the relatives of those whose rights have been directly violated. Here, the relatives would not be the direct victims of the abuse, but would qualify as indirect victims of a violation. For example, parents could claim if their child were tortured.

Potential victims also may file a case in some circumstances. The Court has accepted the argument that an applicant is a "victim" if there is a risk of being directly affected by a State action. However, the applicant must show that there is real personal risk of being a victim in the future, not just a theoretical possibility.

Individuals, groups of individuals and non-governmental organizations may file applications. If a group or NGO lodges a complaint, it must still fulfill the "victim" requirement. Clearly, when the organization is itself the victim of the breach, this is sufficient. Trade unions, companies, religious bodies, political parties, and the inhabitants of a town have been found to fulfill the "victim" requirement in cases brought to Strasbourg. When members of a group or association that are the victims, it may be advisable to lodge both an individual and a group complaint. Should the group complaint fail the admissibility test, the case may succeed on the individual complaint.

A group need not be formally registered or recognized by the State in order to bring a claim to Strasbourg. Moreover, when lack of recognition results in a denial of access to domestic courts and prevents a minority group acting to defend its rights, it may amount to a denial of fair trial or an effective remedy (Articles 6 and 13, respectively) that could be challenged under the Convention.

Other Admissibility Requirements

As is generally true for international human rights procedures, applicants must show that they have tried to seek a remedy for the alleged breach from the State concerned. In rare cases, there may be no suitable and effective remedy for a violation of a particular Convention right. However, if a remedy that should have been sought by the applicant has not been sought, the Court will declare the case inadmissible. Only "effective" remedies that can redress the violation completely must be exhausted. These normally include both judicial and administrative procedures. Discretionary remedies, such as seeking clemency after a conviction, do not generally have to be pursued.

Once a final judgement in the relevant domestic proceedings is received, the applicant must lodge a complaint with the European Court of Human Rights within six months. Where a law in force constitutes a continuing violation, the application may be made at any time. If the applicant is initially unaware of the violation, the six-month limit begins to run from when he/she becomes aware of the violation.

The application cannot have been previously submitted to another body of international investigation, such as the Human Rights Committee.

Investigation and Decision

There may be an exchange of written pleas on both admissibility issues and on the substantive merits of an application. Each party can comment on the submissions made by the other party. The process is usually conducted through written arguments only, although the Court may hold an oral hearing on admissibility or the merits or both. Again, each side is represented at any hearings, and the entire procedure is based on equality between the applicant and the government involved.

NGOs may be asked to provide expert evidence or to appear as witnesses, and minority-rights advocates should be aware of the possibility of submitting an *amicus curiae* brief to the Court if a case is of particular concern. This procedure is called a "third-party intervention" and may be sought once a case has been declared admissible. It offers the possibility of providing useful information to the Court on an issue that may have a direct impact on minority rights beyond the scope of the particular case at hand. An NGO interested in intervening should write to the President of the Court for permission to intervene in a case.

The Court examines the merits of the case through the written arguments and may hear witnesses or even travel to the country concerned if deemed necessary. The Court will seek to reach a friendly settlement, if that is possible, but this happens only if both sides agree.

The Court deliberates in private, but its judgement is public and is communicated immediately to both parties. The Court has limited its judgements to determining whether or not there has been a violation of the Convention and awarding monetary damages and costs when a violation is found. The Court does not issue orders to governments, e.g., to release a prisoner, change its laws, or institute criminal proceedings against those guilty of violating a person's rights. As noted above, the Court's judgement is legally binding on States. Ensuring compliance with a decision of the Court is a matter for the Committee of Ministers under Article 46.2 of the Convention, although the great majority of States readily comply with the Court's judgements.

There is no right of appeal after a judgement is handed down. However, a seven-judge Chamber may relinquish jurisdiction over a case in favour of a "Grand Chamber" of seventeen judges when the case involves a serious issue of general importance or a question affecting the interpretation or application of the Convention.

Urgent Cases

The Court may grant priority to urgent cases, but this is very rare. You should not request that an application be given priority unless there is a very good reason for doing so. The Court also may propose interim measures when there is an imminent, real, and serious risk to the life of the applicant. The Court can request that the State either refrain from the potentially harmful actions or undertake other actions to protect the applicant. States are not obliged to comply, but they generally do. The measures sought and the reasons for seeking them must be indicated on the application form.

The Impact of Strasbourg on Minority Rights

The above summary suggests ways in which the ECHR can protect minority rights, but you should bear in mind that this is not the primary task of the Convention. In many respects, the Convention addresses a fairly narrow range of rights. There is a risk that, if a minority group tries to assert “minority rights” *per se*, the claim might be dismissed as beyond the scope of the Convention and may therefore be considered "manifestly ill-founded". Furthermore, even when a violation is found, it is still up to the State involved to provide remedies beyond damages, such as amending an offending piece of legislation. The Court does not act as an appellate court from domestic decisions. It will only consider whether or not a State has fulfilled its obligations under the Convention, not whether it might have adopted different or even better policies.

At the same time, however, the Strasbourg system is perhaps the most legally powerful mechanism for protecting human rights in the world. It resembles a domestic court proceeding in both its sophistication and in the equality it maintains between the parties involved. It is unlikely to be the first forum to which a minority group may turn, and it cannot consider the general situation of minority rights within a country. Nevertheless, it should be considered a potentially useful tool in the right circumstances.

States Parties to the European Convention on Human Rights

Albania, Andorra, Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Netherlands, Norway, Poland, Portugal, Romania, Russia, San Marino, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, The Federal Republic of Macedonia, Turkey, Ukraine, the United Kingdom of Great Britain and Northern Ireland.

Further Information and Contacts

All communication with the Court should be sent to:

The Registrar
European Court of Human Rights
Council of Europe
F-67075 Strasbourg Cedex
France
tel. +33 3-88-41-27-18; fax: +33 3-88-41-27-30

The primary publication containing the European Convention, Rules of Procedure of the Court and other information is *European Convention on Human Rights: Collected Texts*, published by the Council of Europe. Individual decisions and judgements of the Court are issued in soft-cover format when they appear and are collected in *Reports of Judgements and Decisions*, both of which are available from the Council of Europe. The Council of Europe also publishes an annual *Yearbook of the European Convention on Human Rights*, which contains a selection of the most important cases and information on the Convention's application in domestic law.

Texts of the Court's jurisprudence and additional information about the Court may be found on its website: http://www.echr.coe.int. "Notes for the guidance of persons wishing to apply to the European Court of Human Rights" may be found at http://www.echr.coe.int/NoticesForApplicants/Noticeeng.htm.

A great number of books have been written on the Strasbourg system concerning both specific rights and the system as a whole. Two authoritative analyses are D.J. Harris, M. O'Boyle, and C. Warbrick, *Law of the European Convention on Human Rights* (1995), and P. Van Dyke and G.J.H. Van Hoof, *Theory and Practice of the European Convention on Human Rights* (1998).