Avoiding Plurality of International Proceedings in the European Court of Human Rights

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1. A preliminary issue to be decided by the European Court of Human Rights (ECtHR) when examining the admissibility of a case is set in Article 35 § 2(b)¹ of the Convention for the Protection of Human Rights and Fundamental Freedoms (Convention). In order to prevent duplication of international procedures related to applications that are substantially the same (principle of *lis alibi pendens*) the Court can decide to examine the matter of compliance with Article 35 § 2(b) of the Convention *motu proprio*.

Although the question whether a matter had already been submitted to another procedure of international investigation or settlement has in fact been addressed in the context of individual applications on a number of occasions in the past by the former European Commission of Human Rights, the Court itself has not been called on to examine questions under Article 35 § 2(b) in a great number of cases.

However, in a world where proliferation and overlapping of international jurisdictional institutions has in recent years considerably increased it is worthwhile to see how this issue has been dealt with in the ECtHR. In particular, we sought to reflect on this topic as a contribution to the essays in honour of Budislav Vukas, a dear friend and colleague, having in mind his own participation in various international judicial fora – as a Judge at the International Tribunal for the Law of the Sea, Arbitrator, and not least *Ad Hoc* Judge at the International Court of Justice.

2. Article 35 § 2(b) of the Convention, in its relevant parts, provides:

2. The Court shall not deal with any application submitted under Article 34 that... (b) is substantially the same as a matter that has already been

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¹ Former Article 27 § 1(b).
examined by the Court or has already been submitted to another procedure of international investigation or settlement and contains no relevant new information...

Accordingly, if some of the complaints are substantially the same as those already examined by the ECtHR in another case, they must be rejected pursuant to Article 35 §§ 2(b) and 4 of the Convention.2

3. In addition, as the Court noted in its decision Smirnova and Smirnova v. Russia:3

[T]his provision is intended to avoid the situation where several international bodies would be simultaneously dealing with applications which are substantially the same. A situation of this type would be incompatible with the spirit and the letter of the Convention, which seeks to avoid a plurality of international proceedings relating to the same cases...

The purpose of the research presented in this brief paper is to outline the principles that have emerged and to present the practice of the Convention organs in this respect.

4. In determining whether its jurisdiction is excluded by virtue of Article 35 § 2(b) the Court has to examine whether the case before it is substantially the same as a matter that has already been submitted to a parallel set of international proceedings and, if that is so, whether the simultaneous proceedings may be seen as “another procedure of international investigation or settlement” within the meaning of Article 35 § 2(b) of the Convention.4

5. General principles relevant to the application of Article 35 § 2(b) have been summarized by the Court in its Decision on the competence of the Court to give an advisory opinion5 in the following way:

29. The Court observes that the question whether a matter raised in an individual application had already been submitted to another procedure of international investigation or settlement has in fact been addressed in the context of individual applications on a number of occasions in the

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5 Decision on the competence of the Court to give an advisory opinion [GC], §§ 29–31, ECHR 2004-VI.