The European Human Rights Model –
With a Special View to the Pilot Judgment Procedure of the Strasbourg Court

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I. Introduction

The comparison of various international human rights protection systems is of utmost importance, especially if drawn from different angles, such as the American and the European perspective.

I shall contribute to this dialogue with my experience in the most successful and effective regional system of human rights protection, at least in Europe – if not worldwide: the European Convention on Human Rights (hereafter referred to as the ECHR or just ‘the Convention’) with its court based in Strasbourg – the European Court of Human Rights (hereafter referred to as the ECtHR or simply ‘the Court’).

The drafting of the Convention dates back to the years 1949/50. It entered into force in September 1953. For more than four decades, it provided for a system consisting of two organs; the former Commission and the ‘old’ non-permanent Court. However, in the years after the fall of the ‘iron curtain’, the old system came under pressure, for the simple reason of capacity. The increase of member states led to a dramatic increase in numbers of individual applications. More than 80% of the 837 judgments delivered in the period between 1959 and 1998 were issued between 1990 and 1998.¹

Therefore, in 1998, the ECHR control mechanism was significantly reformed by Protocol No. 11 to the Convention: a single full-time Court of Human Rights was established and a right to individual petition for direct recourse to the ECtHR introduced. Further amendments to the system were

¹ European Court of Human Rights, Survey 1959-1998, 26-86.
introduced by Protocol No. 14 in 2010 in respect of the organisation of and the procedure before the Convention’s institutions.

However, while inter-state applications have been rare, the number of individual applications continued to increase and led – again – to a case-overload before the Court. While the ‘old’ non-permanent Court delivered fewer than 1,000 judgments in 38 years from 1959 to 1998, the number of judgments delivered by the ‘new’ Court since 1998 exceeds 12,500.\(^2\) In 2010, 61,300 applications were allocated to a judicial formation (i.e., Chamber, Committee, Single judge formation), which constitutes an increase of 7 % in comparison with the previous year; 41,183 applications were decided upon, thus 16 % more compared with 2009; 1,499 judgments were delivered concerning 2,607 cases, an increase of 9 % compared with 2009; Particularly dramatic is the following figure: As of 31 December 2010, 139,650 cases were pending before a judicial formation (that is plus 17 % in comparison with 2009).\(^3\)

My contribution pursues three goals: First, I will give a short overview of the main characteristics of the Council of Europe’s human rights system, that is, above all, the right to an individual application. Secondly, I will elucidate the effects of judgments of the Court, which constitute another important reason for the effectiveness of the system. Thirdly, I will present a new special feature of the Strasbourg system, the pilot judgment procedure, an instrument of increasing effectiveness, only developed over the last few years.

II. Individual Applications to the European Court of Human Rights

I have already mentioned that not only the member states may refer to the Court an alleged breach of the Convention and its 14 Protocols by another contracting party (Article 33 ECHR\(^4\)) but also – and above all – individuals, companies, NGOs and groups of individuals claiming to be the victim of a violation of their Convention rights by one of the member states are entitled to lodge applications to the Court under Article 34 of the ECHR. According

\(^2\) European Court of Human Rights, Annual Report 2010, 14.
\(^3\) European Court of Human Rights, Annual Report 2010, 145.
\(^4\) Cited Articles with no reference to a specific treaty will hereafter always refer to the European Convention on Human Rights.