MANIFEST ILL-FOUNDEDNESS AND ABSENCE OF A SIGNIFICANT DISADVANTAGE AS CRITERIA OF INADMISSIBILITY FOR THE INDIVIDUAL APPLICATION TO THE COURT

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1. INTRODUCTION

Pursuant to Article 35, paragraph 3, of the European Convention on Human Rights (ECHR),

“[T]he Court shall declare inadmissible any individual application submitted under Article 34 if it considers that: (a) the application is incompatible with the provisions of the Convention or the Protocols thereto, manifestly ill-founded, or an abuse of the right of individual application; or (b) 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 duly considered by a domestic tribunal”.

The criteria of manifest ill-foundedness and of “no significant disadvantage” are both linked to an examination of the merits of the application: but while a manifestly ill-founded complaint is one which prima facie does not disclose any appearance of a violation of the ECHR or its Protocols, a complaint rejected under the second criterion is one which, to the contrary, is prima facie admissible and might, potentially, lead to the finding of a violation. In this respect, the two criteria under consideration are antithetic.

Despite this fundamental difference, these inadmissibility criteria have an important feature in common: they belong in Strasbourg. Complaints which are rejected under formal criteria such as the non-exhaustion of domestic remedies, the six-month rule or incompatibility with the ECHR have reached the European Court of Human Rights (ECtHR) by mistake and they cannot be examined on the substance by it. Ill-founded and insignificantly disadvantageous applications instead comply with all other formal criteria, and the Court in Strasbourg is indeed the only body competent to examine them.

This consideration has, in my view, an important consequence: these complaints deserve a reasoned decision: succinctly – by necessity – but sufficiently motivated.

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Against the background of the reflections on the future of the Court in Strasbourg, the present paper aims at examining the extent to which these decisions, in their current or proposed form, are in conformity with the fundamental principle of the individual petition to the Court.

2. MANIFEST ILL-FOUNDEDNESS

In 2010, 38,576 applications were declared inadmissible or struck out of the list of cases by a single judge, a committee or a chamber. The single judge formation decided 22,260 cases in 2010. It should be noted in comparison that, in 2010, judgments were delivered in respect of 2,607 applications. 92,900 cases are pending before a single judge formation. In 2010, the average time taken to process an application was 23 months. In 2009, 11% of the 33,065 applications which were declared inadmissible or struck out of the list of cases by a single judge, a committee or a chamber were rejected for non-exhaustion of domestic remedies, 13% for non compliance with the six months rule, 8% for being of a fourth instance nature, 5% for being incompatible with the provisions of the ECHR and 63% were found to be manifestly ill-founded. These figures should be substantially similar in 2010.

It is common view that the ECtHR should not be devoting so much of its attention to these cases and should focus on important ones, capable of affecting the situations of other individuals in the country or elsewhere. However, if one looks at what the Court does as opposed to what it should do, one has to acknowledge that today the role of the ECtHR is primarily to deal with “unmeritorious” applications.

The condition of manifest ill-foundedness fits into the screening function which the admissibility examination is to perform. It is based on a prima facie assessment of the merits of the case: manifestly ill-founded cases do not deserve any further examination because: (a) the complaint is unsubstantiated or unsupported by evidence; (b) the facts about which the applicant complains do not disclose an interference in the enjoyment of the convention rights; and (c) the interference was justified.

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2 A detailed analysis of fourth instance cases goes far beyond the scope of this presentation. The fourth-instance doctrine was elaborated in the first place in the context of Article 6 cases, where “procedural” fairness is opposed to “substantive” fairness (see Garcia Ruiz v. Spain, Application No. 30544/96, Judgment of 21 January 1999). It applies to many areas (civil and criminal cases, social issues cases, administrative cases, taxation, entry, residence and removal of non-nationals) and is an expression of the principle of subsidiarity. The Court has clarified that it cannot question the assessment of the domestic authorities “unless there is a clear evidence of arbitrariness” (Sisojeva and Others v. Latvia, Application No. 60654/00, Judgment of 15 January 2007). Most of these cases are rejected de plano by a single judge or a committee of three judges.