Future challenges to the Convention system

We see the Convention system as a vital part of the protection of the interests of unpopular minorities, for this reason it will need to be protected from challenges both direct and indirect from those whose interests are not served by the recognition of minority rights.

We see specific challenges arising from the current backlog of cases, the relationship between the Court and the Court of Justice of the European Union and the negative approach to court rulings by Member States such as the UK.

Backlog of cases

The Court has a duty to ensure the observance by the member states of the Council of Europe of the Convention and its protocols. The jurisdiction of the Court has been recognised to date by all 47 member states of the Council of Europe. The Convention system has seen a significant rise in demand for rulings since the European Court of Human Rights it was set up in January 1959. It has been a victim of its own success.

In 1999 8,400 applications were allocated to be heard by 2009 this number had risen to 57,200 applications, while the number of pending applications rose to 119,300. At the time more than 90 percent of them, were declared to be inadmissible, and about 60 percent of the decisions by the Court related to what is termed repetitive cases, where the Court has already delivered judgment finding a violation of the European Convention on Human Rights or where well established case law exists on a similar case.

A series of measures have been taken to reduce the number of cases along with the consequential backlog. Protocol 14 was agreed in June 2010 to amend the admissibility criteria for claims and to provide mechanisms to better deal with repeat violations. This was followed by the Interlaken declaration and Action Plan and the Izmir declaration which further improved the workings of the Court.

The new system seems to be working: in the first nine months of 2013, the court decided 9% more cases than in the same period last year and cut the backlog by 13%; another two or three years and they hope to have got rid of the backlog altogether.

In a further response to the escalating demand for judgments and the consequent delays new Rules of Court, which introduce stricter conditions for applying to the Court, came into force on 1 January 2014. These are designed to enhance the Court's efficiency and to speed up the examination of applications. It is too early to assess whether and to what extent they have been successful but we consider that no further measures should be taken until these new rules have been in place for a couple of years and there has been an adequate opportunity to assess how they are working .

It is clear from the continuing increase in applications that the judgments of the Court are valued particularly in countries where the rule of law does come under challenge. We do not consider that the appropriate response to this is to limit the accessibility of the Court but we do consider that the efficiency measures that have already been agreed should be allowed to take effect before further measures are considered.

Cases that resemble each other and raise similar points of law should be considered together, or tackled through pilot cases. Other cases concerning well-established case law and can be dispatched by small committees of judges. By streamlining its work like this, the court's judges delivered nearly 1,100 judgments last year; decisions on admissibility were made on a further 88,000 applications.

Relationship with the Court of Justice of the European Union

The Court of Justice of the European Union (ECJ) is not related to the European Court of Human Rights. However, since all EU states are members of the Council of Europe and have signed the Convention on Human Rights, there is a need for consistency in case law between the two courts. The ECJ refers to the case-law of the European Court of Human Rights and treats the Convention on Human Rights as though it was part of the EU's legal system, since it forms part of the legal principles of the EU member states. The EU is preparing to sign up to the ECHR. In the future some form of memorandum of understanding between the two courts may need to be agreed so that any conflict between them is avoided.

Challenges that undermine the Court's authority

Member States who ignore or refuse to comply with Court rulings not only bring the Court into disrepute but they also provide encouragement for other Member States who have received adverse judgments in respect of more substantial breaches of the Convention to ignore the rulings of the Court. More effective remedies are needed to correct this problem possibly in the form of sanctions against Member States for failure to respond to judgments.

Subsidiarity

Subsidiarity is one of the Court's main weapons in helping to reduce the backlog of cases. State Parties having to attempt to reflect the Convention in their national laws prevents cases unnecessarily having to go to Strasbourg, thus assisting in lowering the backlog. It is also the principle of subsidiarity which ensures that domestic remedies have to be exhausted before a complaint can be made to the Court - another incentive to reduce the backlog through State Parties providing more effective national remedies. The same principle also means that questions of fact, and issues over the burden of proof, are resolved at a national level, again reducing the Court's workload in each individual case.

Another important function of subsidiarity is to act as the Court's built-in protection mechanism for ensuring both that the Convention is a living instrument (changing in line with societal norms in State Parties), and that rights should, where possible, be effected by the national courts. One interpretation of subsidiarity, endorsed by the DLA, is that the State Parties undertake to respect the rights guaranteed, and to abide by the final judgments of the Court (at least in the cases to which they are parties). Protocol 15 means that the importance of this principle is now reflected in the preamble to the Convention. This should assuage any fears that the Court is moving beyond a supervisory role and encroaching on the territory that should properly be left to the national courts.

Subsidiarity means that there can be a corridor of dialogue between the State Parties and the Court, crucial in ensuring a correct interpretation of Convention rights at a national level. The alternative to a principle of subsidiarity operating is that national courts retain the ultimate power of interpretation. Such a provision would completely emaciate the Convention, and abolish an ideal of a uniform platform of rights across the State Parties.

Mechanisms required at the European level to ensure effective protection of individual rights and authoritative interpretation of the Convention

The mechanisms at the European level to ensure the effective protection of individual rights and authoritative interpretation of the Convention, must build on the current Convention and Court system. There are nevertheless ways in which it can be improved.

The growth in the number of applications is to be expected to continue and even increase so there has to be some process to ensure that they can be dealt with reasonably timeously. One or more of the following steps will have to be taken to ensure that access to justice is sufficiently swift and targeted -

- There could be more effort into bringing together different cases which raise closely analogous issues.

- There could be a system of advanced priority in relation to those cases which emanate from countries which have a disproportionately high number of adverse findings.

- There could be an option for swift consideration by a single judge or for more detailed consideration by a full chamber.

- There could be some other limits on access to the court by reason of a certificate from a national accredited human rights institute that the case raises an issue of importance fit to be heard by a chamber.

Overall the court must continue to ensure that it is

- More accessible.

- Able to provide access for group actions and representative actions which would constitute a more economical way of providing a remedy where more than one person is affected by a possible breach of the Convention.

- Able to give effective justice so that the time between making an application and the Court making a decision needs to be reduced. The Court should have powers to make emergency orders where necessary.

- Well informed. Applicants need to have access to qualified and informed representation. To facilitate this all Member States should have a National Human Rights Institute able to provide representation to the Court.

In 2014, the Convention and Court continue to protect all of us, across Europe, and has helped make rights real, in everyday life, for many of the people we work with. We think we should build on this achievement, working within the existing system to ensure that it protects more people's rights in everyday life.