



JUSTITSMINISTERIET

Lovafdelingen

Dato: 24. juni 2009
Kontor: Menneskeretsenheden
Sagsnr.: 2009-629-0388
Dok.: EPF40199

NOTAT

om midlertidig anvendelse af visse dele af protokol nr. 14 til Den Europæiske Menneskerettighedskonvention

1. I 2004 vedtog Europarådets Ministerkomité protokol nr. 14 til Den Europæiske Menneskerettighedskonvention om ændring af konventionens kontrolsystem. Protokollen indebærer en række forenklinger i Den Europæiske Menneskerettighedsdomstols sagsgange, herunder bl.a. således at færre dommere deltager i behandlingen af en række sager.

Danmark var blandt de første lande, der underskrev og ratificerede protokol nr. 14.

For en nærmere beskrivelse af protokol nr. 14 henvises til Justitsministeriets notat til Folketingets Retsudvalg, REU Alm. del - bilag 892, Folketingsåret 2003/2004.

2. Da Rusland – som det eneste af Europarådets 47 medlemslande – fortsat ikke har ratificeret protokol nr. 14, er protokollen imidlertid ikke trådt i kraft. Det betyder, at den stærkt nødvendige reform af menneskerettighedskonventionens kontrolsystem endnu ikke er blevet gennemført. Resultatet er bl.a., at der indgives flere klagesager til Domstolen, end den kan nå at behandle i det nuværende kontrolsystem. Ved udgangen af 2008 var antallet af ubehandlede klagesager ved Domstolen således steget til 97.300, og alene i 2008 modtog Domstolen ca. 23 pct. flere klagesager end i forhold til 2007. Domstolen afgjorde 32.045 klagesager i 2008, fordelt mellem 1.881 domme og 30.164 afgørelser.

I lyset af ovenstående, og da der ikke ses at være udsigt til, at Rusland ratificerer protokol nr. 14 inden for en overskuelig fremtid, har flere

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medlemslande i Europarådet, herunder Danmark, arbejdet aktivt for at finde en midlertidig løsning.

3. Efter forhandlinger i Europarådets Styringskomité for Menneskerettigheder vedtog Europarådets Ministerkomité på sit møde den 12. maj 2009 protokol nr. 14 *bis*, som indebærer, at medlemslandene fremover enkeltvis kan beslutte midlertidigt at anerkende visse af de forenklede procedurer, der er indeholdt i protokol nr. 14. Det drejer sig dels om *enkeltdommer-proceduren*, hvorefter en enkelt dommer fremover vil kunne afvise åbenbart ugrundede klager (i dag træffes disse afvisningsbeslutninger af en komité bestående af tre dommere). Endvidere drejer det sig om *komité-proceduren*, som indebærer, at en komité bestående af tre dommere fremover kan træffe afgørelse i klagesager, der vedrører spørgsmål, som allerede er afklaret i Domstolens retspraksis (i dag træffes sådanne afgørelser af syv dommere).

Det fremgår af artikel 6 i protokol nr. 14 *bis*, at reglerne træder i kraft tre måneder efter, at den er blevet ratificeret af mindst tre medlemslande. Herudover kan medlemslandene efter artikel 7 afgive en erklæring om, at de i protokollen indeholdte procedurer for behandling af sager ved Domstolen skal gælde midlertidigt for klagesager vedrørende dette medlemsland efter 30 dage, uanset tidspunktet for protokollens ikrafttræden. En sådan erklæring vil ifølge artikel 8 gælde for enhver klage, der på dette tidspunkt er indgivet til Domstolen vedrørende det pågældende medlemsland, medmindre klagen er indgivet mod flere medlemslande, der ikke alle har accepteret en sådan midlertidig anvendelse. Det fremgår endvidere af protokollens artikel 9, at protokollen automatisk vil ophøre, når protokol nr. 14 træder i kraft.

4. Danmark har den 27. maj 2009 undertegnet protokol nr. 14 *bis* uden ratifikationsforbehold. Protokollen træder i kraft for Danmark den 1. oktober 2009.

Allerede fra den 1. juli 2009 vil Den Europæiske Menneskerettighedsdomstol kunne anvende de ovenfor omtalte forenklede procedurer i klagesager vedrørende Danmark, idet udenrigsministeren, jf. protokollens artikel 7, har erklæret, at Danmark accepterer en sådan fremskyndet anvendelse af protokollen.



Protocol No. 14bis to the Convention for the Protection of Human Rights and Fundamental Freedoms

Strasbourg, 27.05.2009

Convention | Protocol
Protocols: No. 4 | No. 6 | No. 7
No. 12 | No. 13 | No. 14
Agreement of Madrid (12.V.2009)
Explanatory Report
Français

Preamble

The member States of the Council of Europe, signatories to this Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention"),

Having regard to Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention, opened for signature by the Committee of Ministers of the Council of Europe in Strasbourg on 13 May 2004;

Having regard to Opinion No. 271 (2009), adopted by the Parliamentary Assembly of the Council of Europe on 30 April 2009;

Considering the urgent need to introduce certain additional procedures to the Convention in order to maintain and improve the efficiency of its control system for the long term, in the light of the continuing increase in the workload of the European Court of Human Rights and the Committee of Ministers of the Council of Europe;

Considering, in particular, the need to ensure that the Court can continue to play its pre-eminent role in protecting human rights in Europe,

Have agreed as follows:

Article 1

In relation to High Contracting Parties to the Convention which are bound by this Protocol, the Convention shall read as provided in Articles 2 to 4.

Article 2

1. The title of Article 25 of the Convention shall read as follows:

"Article 25 – Registry, legal secretaries and rapporteurs"

2. A new paragraph 2 shall be added at the end of Article 25 of the Convention, which shall read as follows:

"2. When sitting in a single-judge formation, the Court shall be assisted by rapporteurs who shall function under the authority of the President of the Court. They shall form part of the Court's registry."

Article 3

1. The title of Article 27 of the Convention shall read as follows:

"Article 27 – Single-judge formation, committees, Chambers and Grand Chamber"

2. Paragraph 1 of Article 27 of the Convention shall read as follows:

"1. To consider cases brought before it, the Court shall sit in a single-judge formation, in committees of three judges, in Chambers of seven judges and in a Grand Chamber of seventeen judges. The Court's Chambers shall set up committees for a fixed period of time."

3. A new paragraph 2 shall be inserted in Article 27 of the Convention, which shall read as follows:

"2. When sitting as a single judge, a judge shall not examine any application against the High Contracting Party in respect of which that judge has been elected."

4. Paragraphs 2 and 3 of Article 27 of the Convention shall become paragraphs 3 and 4 respectively.

Article 4

Article 28 of the Convention shall read as follows:

"Article 28 – Competences of single judges and of committees"

1. A single judge may declare inadmissible or strike out of the Court's list of cases an application submitted under Article 34, where such a decision can be taken without further examination.

2. The decision shall be final.

3. If the single judge does not declare an application inadmissible or strike it out, that judge shall forward it to a committee or to a Chamber for further examination.

4. In respect of an application submitted under Article 34, a committee may, by a unanimous vote,

- a. declare it inadmissible or strike it out of its list of cases, where such decision can be taken without further examination; or

- b. declare it admissible and render at the same time a judgment on the merits, if the underlying question in the case, concerning the interpretation or the application of the Convention or the Protocols thereto, is already the subject of well-established case-law of the Court.

5. Decisions and judgments under paragraph 4 shall be final.

6. If the judge elected in respect of the High Contracting Party concerned is not a member of the committee, the committee may at any stage of the proceedings invite that judge to take the place of one of the members of the committee, having regard to all relevant factors, including whether that Party has contested the application of the procedure under paragraph 4.b."

Article 5

1. This Protocol shall be open for signature by member States of the Council of Europe signatories to the Convention, which may express their consent to be bound by :

- a. signature without reservation as to ratification, acceptance or approval; or
- b. signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.

2. The instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 6

1. This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which three High Contracting Parties to the Convention have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 5.

2. In respect of any High Contracting Party to the Convention which subsequently expresses its consent to be bound by this Protocol, the Protocol shall enter into force for that High Contracting Party on the first day of the month following the expiration of a period of three months after the date of expression of its consent to be bound by the Protocol in accordance with the provisions of Article 5.

Article 7

Pending the entry into force of this Protocol according to the conditions set under Article 6, a High Contracting Party to the Convention having signed or ratified the Protocol may, at any moment, declare that the provisions of this Protocol shall apply to it on a provisional basis. Such a declaration shall take effect on the first day of the month following the date of its receipt by the Secretary General of the Council of Europe.

Article 8

1. From the date of the entry into force or application on a provisional basis of this Protocol, its provisions shall apply to all applications pending before the Court with respect to all High Contracting Parties for which it is in force or being applied on a provisional basis.

2. This Protocol shall not apply in respect of any individual application brought against two or more High Contracting Parties unless, in respect of all of them, either the Protocol is in force or applied on a provisional basis, or the relevant corresponding provisions of Protocol No. 14 are applied on a provisional basis.

Article 9

This Protocol shall cease to be in force or applied on a provisional basis from the date of entry into force of Protocol No. 14 to the Convention.

Article 10

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe of:

- a. any signature;
- b. the deposit of any instrument of ratification, acceptance or approval;
- c. the date of entry into force of this Protocol in accordance with Article 6;
- d. any declaration made under Article 7; and
- e. any other act, notification or communication relating to this Protocol.

In witness whereof, the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 27th day of May 2009, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.