

The role of the European Court of Human Rights at the Improvement of the National System of the Republic of North Macedonia on respect and Protection of Freedom and Human Rights

Research Article

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Abstract

Human rights are the inseparable part of an individual, but at the same time national and international systems operate in it. The violation of the rights and freedom makes impossible the balance between national and international stability. For this reason, apart from the special care of the national system, international organizations also have an important role in the protection of human rights and freedom by adopting the Convention and founding the European Court of Human Rights. The purpose of the paper is to present the effort, the role of the European Court of Human Rights, by giving an overview for Macedonia's success in protecting the rights of North Macedonian citizens. At the same time will also be emphasized the need of international protection with particular emphasis on the European protection for human rights.

The main hypothesis of the paper will be: how effective is the national system for the protection of citizens' rights in North Macedonia and how effective the European system is!

Keywords: human rights, their protection, the European Court of Human rights, the effectiveness of human rights protection, etc.

1. Introduction

The European system has been able to function effectively because relevant governments have been willing to cooperate with government bodies and really wanted to ensure the effective enjoyment of human rights within their territory.

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Problems coming to Strasbourg, no matter how important they are to relevant individuals, apart from some exceptions, are marginal compared to the massive and flagrant violations of human

rights that occur in other parts of the world.¹ Initiatives to harmonize judicial cooperation aspects arise within the framework of international cooperation.²

2. Jurisdiction of the Court

For the review of cases filed before the Court, the Convention has foreseen three types of bodies. These are: three-member committees, seven-member chambers, and the Grand Chamber consisting of seventeen members.³

The European Court of Human Rights has the right to decide on:⁴

1. The jurisdiction of the Court extends to all matters relating to the interpretation and application of the Convention and the protocols referring thereto.

2. The court itself decides in the event of disputes concerning its jurisdiction.

Each Contracting Party may refer to the Court any alleged violation of the provisions of the Convention and of its protocols by another Contracting Party.⁵ The court may obtain claims from any person, non-governmental organization or group of individuals claiming to be victims of a violation by one of the Contracting Parties of the rights set forth in Convention or its protocols. Contracting Parties are encouraged not to impede the effective exercise of this right in any way.⁶

The court is empowered to examine these issues:⁷

1. The court may only deal with the case after exhaustion of all domestic remedies under the generally accepted rules of international law and within a period of six months from the date on which the final decision was taken.

2. The Court shall not consider any individual application filed under Article 34 when:

- a. is anonymous,

- b. is essentially the same as a matter previously examined by the Court or subjected to another procedure for an international settlement or investigation and does not contain any new relevant facts.

3. The Court shall declare any individual claim made under Article 34 inadmissible when it considers that:

- a. the Referral is incompatible with the provisions of the Convention or its protocols, manifestly unreasonable or constitutes an abuse of the right to an individual claim, or

- b. the applicant has not suffered any significant harm unless the observance of human rights as defined in the Convention and its protocols requires consideration of the claim in relation to the ground, provided that it does not reject any issue for this reason unless it has been examined as need by a national court.

¹ J.G. Merrills, Council of Europe: European Convention on Human Rights, Introduction to International Protection of Human Rights, Institute for Human Rights, University of Abo Academy, 1999, p. 372.

² Wendy Kennett, The Enforcement of judgment in Europe, Oxford Private International Law Series, pp. 5

³ Zejnulla Gruda, International Human Rights Protection, University of Pristina, Pristina 2000,

⁴ Article 32 of the Convention

⁵ Article 32 of the Convention

⁶ Article 34 of the Convention

⁷ Article 35 and 37 of the Convention

4. The Court shall reject any request it considers unacceptable in pursuance of this Article. It can do this at any stage of the proceeding.

3. Examination of the case

The Court shall examine the case together with the representatives of the parties and, if necessary, undertake an investigation for the effective conduct of which the Contracting Parties concerned provide all the necessary facilities.⁸

The dispute can be resolved through reconciliation in the following cases:⁹

1. At any stage of the trial, the Court may make available to interested parties, in order to reach an agreed settlement on the matter on the basis of respect for human rights as defined in the Convention and its Protocols.
2. The trial conducted under paragraph 1 is confidential.
3. If an agreed settlement is reached, the Court delists the case from the list through a decision limited to a brief summary of the merits of the matter and the solution reached.
4. The decision shall be forwarded to the Committee of Ministers, which shall supervise the implementation of the terms of settlement by conciliation as determined in the decision.

Public hearings and the right to know the documents:¹⁰

1. Sessions are public, unless the Court in exceptional circumstances does otherwise.
2. Documents submitted to the secretary are open to the public, unless the President of the Court decides otherwise.

Mandatory force and execution of decisions¹¹

1. The Contracting Parties undertake to respect the final judgment of the Court in any matter where they are parties.
2. The final judgment of the Court shall be forwarded to the Committee of Ministers, which shall supervise its execution.
3. If the Committee of Ministers considers that the oversight of the execution of a final decision is hampered by a problem of interpretation of the decision, it may refer the case to the Court for a ruling on a matter of interpretation. Such a decision requires a two-thirds majority of the representatives entitled to attend the Committee of Ministers. If the Committee of Ministers is of the opinion that a High Contracting Party refuses to respect a final judgment of the Court in a case where it is a party after having sent a formal notification to that Party and the decision dealing with a two-thirds majority of the representatives participating in it may refer the matter to the Court if the Party has fulfilled its obligation under paragraph 1.
5. If the Court finds a violation of paragraph 1, it shall refer the matter to the Committee of Ministers for consideration of the measures to be taken. If the Court finds no violation of paragraph 1, it refers the matter to the Committee of Ministers, which closes the examination of the case.

⁸ Article 38 of the Convention

⁹ Article 39 of the Convention

¹⁰ Article 39 of the Convention

¹¹ Article 46 of the Convention

4. Advisory opinions

Advisory opinions may be pronounced in these cases:¹² The Court, at the request of the Committee of Ministers, may issue advisory opinions on legal issues related to the interpretation of the Convention and its Protocols. Such considerations shall not deal with any matter relating to the content and scope of the rights and freedoms set forth in the Convention Title and its Protocols or any other matter which the Court or the Committee of Ministers may consider as a result of the any request in accordance with the Convention. The decision of the Committee of Ministers to ask the Court for advisory opinions shall be taken by the vote of the majority of representatives entitled to participate in it.

This was with regard to the procedural and jurisdictional issue of the European Court of Human Rights, but to satisfy justice to the injured party, the most important part is the execution of the decision to be made by the national state in which the offense was committed, the party will be granted the joy of illicit or denied rights, or compensation for the denial of the same. For this reason, national norms or mechanisms guaranteeing the execution of the imposed decision and the importance of national institutions and bodies to improve the national system will be presented for two reasons:

1. In order to prevent non-admissible statements from the State to execute decisions of the European Court, decisions that are a signal of the gaps in the efficiency of the national judicial system and
2. To ensure the rights of citizens within the national system on the basis of which they live and operate. By raising the level of respect for the freedoms and rights of citizens, the level of democratic development of the state is increased.
2. The role of the inter-committees for the execution of the decisions of the European Court of Human Rights

In order to monitor the execution of the Court's decisions, a Response Commission is established to enforce the decisions of the European Court of Human Rights.¹³ The professional and administrative work of the Inter-ministerial Commission is carried out by the Bureau for representation of the Republic of North Macedonia before the European Court of Human Rights.¹⁴ The board of directors is composed of officials who manage the Ministry of Justice, Ministry of Interior, Ministry of Foreign Affairs, Ministry of Labor and Social Policy, Ministry of Finance, Ministry of Education and Science, Ministry of Health, Ministry of Transport and Communications and Ministry of Local Self-Government. The members of the Inter-Ministerial Commission are the President of the Judicial Council of the Republic of North Macedonia, the President of the Supreme Court of the Republic of North Macedonia, the President of the Council of Public Prosecutors, the Public Prosecutor of the Republic of North Macedonia and the Government Agent. Other representatives from relevant institutions may participate in the work of the Inter-ministerial Commission.¹⁵

¹² Article 47 of the Convention

¹³ Article 6 of the Law on the Execution of Decisions of the European Court of Human Rights, Official Gazette of RM no. 67/09 from 29.05.2009.

¹⁴ Article 7 of the Law

¹⁵ Article 8 of the Law

The Government of the Republic of North Macedonia, by a decision, establishes among the Board of Directors. The Minister of Justice is headed by the Board of Directors.¹⁶

Among the Board of Directors performs the activities related to:¹⁷

- 1) analysis of the judgments of the Court adopted against the Republic of North Macedonia for determining the reasons leading to the violation;
- 2) recommending individual and general measures for the competent state authorities for removing the violation established by the Court and for removing the consequences thereof;
- 3) giving proposals for improvement of the legal regulation for protection of human rights;
- 4) monitoring the execution of the decisions of the Court;
- 5) ensuring and exchanging of information and data in the field of execution of the Court's decisions;
- 6) monitoring the existing system for executing decisions and proposing measures for its improvement and
- 7) other things determined by law.

An annual report is drawn up between the committee of the commission for its work. The report referred to in paragraph (1) of this Article shall be submitted by the Ministry of Justice through the Ministry of Justice to the Government and the Standing Inquiry Committee on Freedoms and Rights Law of the citizen of the Parliament of the Republic of North Macedonia and the Assembly of the Republic of North Macedonia no later than March 31st the following year.¹⁸

5. The level of protection of human freedoms and rights in the Republic of North Macedonia

According to the definition of the Republic of North Macedonia¹⁹ in the Constitution, it is a sovereign, independent, democratic state.²⁰ The level of democracy of the state is measured by the level of respect for human rights and freedoms, as the basic foundation for further relations between the individual and the state - the state and the international society. On the other hand, we have the European Court of Human Rights, which is an international co-corrector or advocate for the defence of human rights if they are not defended by national norms and in national institutions. More often, the reasons the citizens of the Republic of North Macedonia complain about are the handling of the domestic courts for civil cases, primarily in the litigation procedures.²¹

According to the last annual report on the work of the Inter-ministerial Commission for the execution of the ESCHP decisions published so far,²² we can also see the amount of funds allocated for just satisfaction from the judgments of the ESCHP. From the annual report the situation is as follows:²³

¹⁶ Article 9 and 10 of the Law

¹⁷ Article 11 of the Law

¹⁸ Article 13 of the Law

¹⁹ Сегашна Република Северна Македонија

²⁰ Article 1 of Constitution of RM

²¹ Svetlana Veljankovska, Proceedings before the European Court of Human Rights concerning the Republic of Macedonia, UKLO, Bitola, Faculty of Law - Kichevo, pg. 3

²² March, 2018

²³ Annual report on the work of the inter-ministerial commission for the execution of the ECHR decisions for 2017, March 2018, (Taken from) <http://biroescp.gov.mk/wp-content/uploads/2016/12/%D0%93%D0%BE%D0%B4%D0%B8%D1%88%D0%B5%D0%BD-%D0%B8%D0%B7%D0%B2%D0%B5%D1%88%D1%82%D0%B0%D1%98-2017.pdf>

2011	2012	2013	2014	2015	2016	2017
165.084 €	337.150 €	353.408 €	301.240 €	139.145 €	102.870 €	87.570 €

From statistic data we can see that in the period 2012-2014 we have an enormous increase in the amount of just satisfaction to the detriment of the state budget, 2015-2016 the code decreases two more which goes towards reduction until 2017.

6. Conclusion

From the presented data we can conclude:

- The creation of the European Court of Human Rights is a result of the need of citizens for their justice to be done and to gain their rights, which were challenged by national institutions. It's the last mechanism at the disposal of citizens, but at the same time a clear barometer of respect of rights and freedom as fundamental elements of democracy.
- National systems are working more to guarantee the freedoms and rights of their citizens, leaving less room for the execution of judgments by the European Court of Human Rights, which are evidence that the national system should reconsider its functionality.
- Having in mind the role of the Inter-Ministerial Commission for the execution of decisions of the European Court of Human Rights, greater responsibility for their work should be required. Responsibility should be both legal and economic. The legal responsibility for the failure to fulfil the obligations for reviewing the legal gaps in the national system, the legal defects that have not been removed in the system after the analysis of the judgments of the Court brought against North Macedonia through which the causes that led to the violation were determined and, at the same time, the Commission should act by recommending individual and general measures of the competent state bodies for determining the specified violation. Economic responsibility refers to the damage done to the state that is done by disrespecting justice or obstructing the individual for some freedoms and rights.
- From the official statistical data we can see that in the last two years we have a reduction in monetary indemnity, from which we can underline the following assumptions:
 1. In Macedonia, the principle of democracy and the rule of law is governed to a greater extent;
 2. That we have a better functioning of the judicial system in North Macedonia in recent years;
 3. Disputes for disobeying human freedoms and rights are resolved through peace instruments.

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