UNIT 4. THE INTERNATIONAL PROTECTION OF HUMAN RIGHTS AT THE REGIONAL LEVEL: THE WORK OF THE COUNCIL OF EUROPE

1. General ideas.
2. The European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 and its Protocols.
3. The European Social Charter of 1961 and its Protocols.
4. Other Conventions for the protection of Human Rights.

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1. GENERAL IDEAS

- Council of Europe: European IO with 46 member states (Russia expelled in March 2022).
  - Statute of the Council of Europe, 5 May 1949.
- Purpose: safeguard and promote the values and principles constituting a common heritage.
- Most advanced system of international human rights protection:
  - European Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950 + Protocols.
  - European Social Charter, 18 October 1961 + Protocols.
  - European Court of Human Rights (ECHR).

2. THE EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS AND ITS PROTOCOLS

- Preamble of the Convention: to give legal content to the UDHR.
- 16 Additional Protocols (substantive and procedural protocols):
  - Additional Protocol of 20/3/1952 introduces new rights (right to peaceful enjoyment of property, right to education and right to free elections by secret ballot).
  - Protocol No. 2 grants the European Court of Human Rights competence to issue advisory opinions.
  - Protocol No. 4 recognizes certain rights and freedoms in addition to those contained in the Convention and in the Additional Protocol of 16/9/1963: no deprivation of liberty for non-fulfilment of contractual obligations, freedom of movement and to choose one's residence, prohibition of expelling nationals from their own State, prohibition of collective expulsion of aliens.
  - Protocol No. 6 of 28/4/1983 covers the abolition of the death penalty.

- Protocol No. 7 introduces new rights: right of aliens to procedural guarantees in the event of expulsion from the territory of a State; right of a person convicted of a criminal offence to have the conviction of sentence reviewed by a higher tribunal; right to compensation in cases of miscarriage of justice; right not to be tried or punished in criminal proceedings for an offence for which one has already been acquitted or convicted (*ne bis in idem*); equality of rights and responsibilities between spouses).
- Protocol No. 12 establishes a general prohibition of discrimination.
- Protocol No. 13 abolishes the death penalty in all circumstances.

➢ Permanently updated system:
- Interpretation body: European Commission on Human Rights.
- 7/5/1999: Creation of the Commissioner for Human Rights of the Council of Europe, to promote human rights education, awareness and respect.

2.1. OBLIGATIONS OF STATES PARTIES

- Art. 1 Convention: The High Contracting Parties recognize all persons under their jurisdiction the rights and freedoms defined in Title I of the Convention.
  - Interpretation: the Convention functions as a European public policy instrument.
  - Ordinary territorial conception, but allows exceptions if the State party has assumed public powers through effective control and in cases of extraterritoriality (e.g., acts of diplomatic/consular agents, aircraft and flag vessels). United Kingdom-Northern Ireland. Turkey: Southeast of the territory.
  - Art. 15 Possibility of derogation: state of emergency, EXCEPT:
    - right to life;
    - prohibition of torture;
    - prohibition of slavery/servitude;
    - *nullum crimen/nulla poena sine lege*;
    - abolition of death penalty (Protocol No. 6 and 13);
    - *Ne bis in idem* (Art. 4 of Protocol no. 7).

2.2. RIGHTS RECOGNIZED

- Essentially: civil and political rights.
  - Convention:
    - Right to life.
    - Prohibition of torture.
    - Prohibition of slavery and forced labor.
    - Right to liberty and security.
    - Right to a fair trial.
    - *Nulla poena sine lege.*
    - Right to respect for private and family life.
    - Freedom of thought, conscience and religion.
    - Freedom of expression.
    - Freedom of assembly and association.
    - Right to marry.
    - Right to an effective remedy.
    - Prohibition of discrimination in the exercise of these rights.

- Protocol No. 1:
  - Right to property.
  - Right to education.
  - Right to free elections.
- Protocol No. 4:
  - Prohibition of imprisonment for debt.
  - Freedom of movement.
  - Prohibition of expulsion of nationals.
  - Prohibition of collective expulsion of aliens.
- Protocol No. 7:
  - Procedural guarantees for the expulsion of foreigners.
  - Double degree of jurisdiction in criminal matters.
  - Right to compensation in case of miscarriage of justice.
  - *Ne bis in idem*.
  - Equality of spouses.
- Protocol No. 12:
  - Prohibition of discrimination.

2.3. GUARANTEES

- Convention: System of guarantees shared by three institutions:
  - European Commission on Human Rights (1954).
  - European Court of Human Rights (1959).
  - Committee of Ministers of the Council of Europe: responsible under the Convention for supervising the execution of the Court's judgments. Referral procedure.
- System updates by Protocols:
  - Protocol No. 8: the European Commission on HR will have the possibility to set up Chambers (min. 7 members) to examine individual petitions that can be dealt with based on established case law or that raise no serious questions regarding the interpretation or application of the Convention. Also, the Commission may set up committees (min. 3 members), with the power, exercisable by a unanimous vote, to declare inadmissible or strike from its list of cases a petition when such a decision can be taken without further examination.
  - Protocol No. 9: applicants' right to refer a case to the Court in certain circumstances.
  - Protocol No. 10: improving the Convention's supervision procedures. It changes the rule on the majority required when the Committee of Ministers is called upon to vote on whether the Convention has been violated in cases not referred to the European Court of Human Rights.

- Protocol No. 11: restructuration of the judicial system. All alleged violations of the rights of persons are referred directly to the new permanent Court.
- Protocol No. 14: introduction of a new admissibility criterion (the treatment of repetitive cases or clearly inadmissible cases) to improve efficiency of the European Court of Human Rights.
- Protocol No. 15: amendments to the Court system and deadlines.
  - Four-month time limit to apply: effective from 1 February 2022. Applicable only to applications in which the final domestic decision in question was taken on or after 1 February 2022.
  - Removal of the second safeguard of the ‘significant disadvantage’ admissibility criterion that previously prevented the rejection of an application that had not been duly considered by a domestic tribunal;

2.4. THE EUROPEAN COURT OF HUMAN RIGHTS

- Composition:
  - No. of judges = States Parties (must be of high moral character and either possess the qualifications required for appointment to high judicial office or be jurisconsults of recognized competence).
  - Election: Parliamentary Assembly of the Council of Europe by absolute majority from a list of three candidates submitted by each State.
  - Term: nine years, non-renewable.
- Organization:
  - Examination of cases: committees of 3 judges.
  - Chambers of 7 judges, or Grand Chamber of 17 judges + 3 alternates.
    - Grand Chamber: 3-year term, includes President, Vice-Presidents and Section Presidents.
  - Deliberations in camera and secret. Decisions by majority present.
- Jurisdiction:
  - Matters concerning the interpretation and application of the Convention and its Protocols, as provided in Art. 33, 34 and 47 of the Convention.
  - Contentious cases (compulsory jurisdiction): between States (Art. 33) and individual claims (Art. 34).
    - Between States: referral of a case by another State Party.

- Individual claims: natural persons, NGOs or groups (also legal persons) victims of a violation (actual or potential, by an act or omission), but not in the abstract.
  - ❖ Conditions for admissibility:
    - ✓ exhaustion of local remedies. Effective and accessible.
    - ✓ 4-month time limit (Protocol No. 15)
    - ✓ procedural requirements: not anonymous, prohibition of *res judicata*.
  - ❖ Inadmissibility: claim incompatible with Convention and Protocols, ill-founded or abusive, no significant disadvantage.

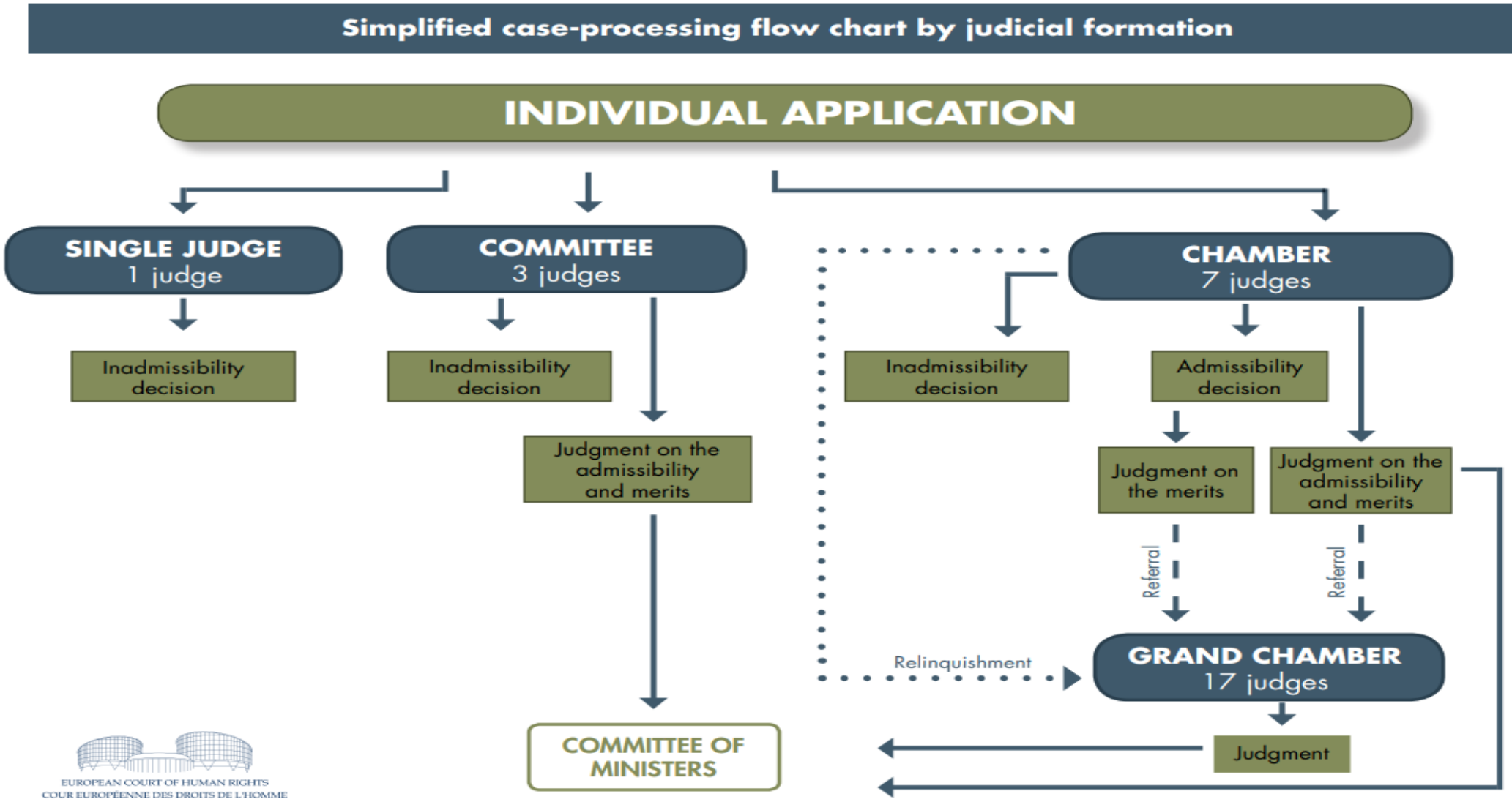
- Consultative cases (restrictive jurisdiction): Issuance of opinions at the request of the Committee of Ministers + Protocol No. 16: Possibility to render advisory opinions called by national highest courts on legal questions of interpretation.
  - Submission to the Registrar and transmittal to the parties.
  - Issuance by Grand Chamber in public hearing.

➢ Judgment of the Court:

- Reasoned and read in open court.
  - 3 months: request for referral to Grand Chamber (College of 5 judges, serious question relating to interpretation or application, or serious in general).
    - ❖ Grand Chamber Judgment: Final
  - Public in the appropriate form.

- Binding force between the parties: declaratory, with the State choosing the means of redress.
  - Committee of Ministers: Monitor execution.
    - Protocol No. 14: reinforcement of competence.
      - ✓ Failure to comply with judgment: notify the Party and by 2/3 majority, refer the matter to the Court.
      - ✓ If the ECHR admits violation of Paragraph 1, referral to Committee of Ministers to consider measures.

➢ Life of an application: https://www.echr.coe.int/Documents/Case_processing_ENG.pdf


Simplified case-processing flow chart by judicial formation
INDIVIDUAL APPLICATION
SINGLE JUDGE
1 judge
COMMITTEE
3 judges
CHAMBER
7 judges
Inadmissibility decision
Inadmissibility decision
Judgment on the admissibility and merits
Inadmissibility decision
Admissibility decision
Judgment on the merits
Judgment on the admissibility and merits
Referral
Referral
Relinquishment
GRAND CHAMBER
17 judges
Judgment
COMMITTEE OF MINISTERS
EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

3. THE EUROPEAN SOCIAL CHARTER OF 1961 AND ITS PROTOCOLS

- 1961: European Social Charter
- Subsequent developments:
  - Additional Protocol to the European Social Charter, 1988: extends the rights (right of workers to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex; right of workers to be informed and consulted within the undertaking; right of workers to take part in determining and improving working conditions and the working environment; right of elderly persons to social protection).
  - Protocol amending the European Social Charter, 1991: improves the Charter's monitoring system.
  - Additional Protocol to the European Social Charter Establishing a System of Collective Complaints, 1995.
  - Revised Social Charter, 1996: embodies in one instrument all rights guaranteed by the Charter of 1961 and its additional Protocol of 1988, and adds new rights and amendments adopted by the Parties. It is gradually replacing the initial 1961 treaty.

3.1. OBLIGATIONS OF STATES PARTIES

- Art. 20 of the Charter: Commitments of States Parties (Possibility of suspension - Art. 30 for war or public danger)
  - Consider Part I as a statement of the objectives which it will pursue by all appropriate means.
  - Consider itself bound by at least by at least six of the following nine articles of Part II: Articles 1, 5, 6, 7, 12, 13, 16, 19 and 20 (Revised Social Charter, 1996).
  - Be bound by any additional number of articles or numbered paragraphs of Part II that it chooses, provided that the total number of articles and numbered paragraphs by which it is bound is not less than 16 articles or 63 numbered paragraphs (Revised Social Charter, 1996).
  - Establish a Labor inspection system.

3.2. RIGHTS RECOGNIZED

- Essentially: social and economic rights
  - European Social Charter 1961:
    - Right to work.
    - Right to equitable working conditions.
    - Right to safety and hygiene at work.
    - Right to equitable remuneration.
    - Trade union rights.
    - Right to collective bargaining.
    - Right of children and adolescents to protection.
    - Right of women workers to protection.
    - Right to professional orientation.
    - Right to professional training.
    - Right to health protection.
    - Right to social security.
    - Right to social and medical assistance.
    - Right to the benefits of social services.
    - Right of physically or mentally handicapped persons to vocational training and professional or social rehabilitation.

- Right of the family to social, legal or economic protection.
- Right of mothers and children to social and economic protection.
- Right to engage in gainful activity in the territory of other States Parties.
- Right of migrant workers and their families to protection and assistance.

- Protocol 1988:
  - Right to equal opportunity and treatment in employment, without discrimination based on sex.
  - Right to information and consultation.
  - Right to take part in determining and improving working conditions and working environment.
  - Right to social protection of the elderly.
- Revised Social Charter 1996:
  - Right to protection of workers in case of insolvency of the employer.
  - Right to dignity at work.
  - Right of workers with family responsibilities to equality of opportunity and treatment.
  - Right of workers' representatives to protection in the workplace and to appropriate facilities for the performance of their duties.
  - Right to information and consultation in the event of collective dismissals.
  - Right to protection against poverty and social exclusion.
  - Right to housing.

- Possibility of suspension due to war or public danger, and restrictions on some of the rights if established by law and justified as necessary.
- Scope of application: nationals and foreign nationals who are subjects of other States Parties legally residing or regularly working in the territory.

3.3. GUARANTEES OR CONTROL MECHANISMS

- Non-jurisdictional mechanisms:
  - Reports on accepted provisions:
    - Submission of biennial report to SG.
  - Reports on provisions not accepted:
    - States must report to SG at appropriate intervals or upon request of the Committee of Ministers.
  - Additional Protocol 1995:
    - IOs and consultative and listed NGOs of the Governmental Committee and national organizations may submit collective complaints for unsatisfactory application of accepted provisions.
      - The Governmental Committee will prepare a report and the Committee of Ministers will prepare a resolution and recommendation on measures.
- Review: two supervisory bodies
  - Committee of Experts (now European Committee of Social Rights): 7 members appointed by the Committee of Ministers from a list of independent experts proposed by the States Parties.
  - Governmental Social Subcommittee of the Council of Europe (now Governmental Committee): one representative of each State Party + 2 employers and 2 workers (observers in an advisory capacity).

4. OTHER CONVENTIONS FOR THE PROTECTION OF HUMAN RIGHTS

- The work of the Council of Europe has been developed through other conventions:
  - European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 1987, and its Protocol No. 1 (possibility for non-member states to accede) and Protocol No. 2 (technical and organizational aspects).
  - Convention on Preventing and Combating Violence Against Women and Domestic violence, 2011.
  - Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine, 1997.
    - Additional Protocol on the Convention on Human Rights and Biomedicine concerning Genetic Testing for Health Purposes, 2008.
  - European Charter for Regional or Minority Languages, 1992.
  - Convention on the Avoidance of Statelessness in Relation to State Succession, 2006.
  - Convention on Action against Trafficking in Human Beings, 2005.
  - Framework Convention for the Protection of National Minorities, 1994.

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