

LL.B VI SEMESTER

SUBJECT- LAW OF HUMAN RIGHTS

TOPIC- EUROPEAN CONVENTION ON HUMAN RIGHTS (ECHR)

The **European Court of Human Rights** frequently referred to as the **Strasbourg Court**, is a supranational or international court established by the European Convention on Human Rights. The court hears applications alleging that a contracting state has breached one or more of the human rights provisions concerning civil and political rights set out in the convention and its protocols. An application can be lodged by an individual, a group of individuals, or one or more of the other contracting states. Aside from judgments, the court can also issue advisory opinions. The convention was adopted within the context of the Council of Europe, and all of its 47 member states are contracting parties to the convention

PART II . EUROPEAN COURT OF HUMAN RIGHTS (ARTICLES 19 TO 51)

Article 19 – Establishment of the Court[

To ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto, there shall be set up a European Court of Human Rights, hereinafter referred to as "the Court". It shall function on a permanent basis.

Article 20 – Number of judges

The Court shall consist of a number of judges equal to that of the High Contracting Parties.

Article 21 – Criteria for office

- The judges shall be of high moral character and must either possess the qualifications required for appointment to high judicial office or be jurisconsults of recognized competence.
- The judges shall sit on the Court in their individual capacity.
- During their term of office the judges shall not engage in any activity which is incompatible with their independence, impartiality or with the demands of a full-time office; all questions arising from the application of this paragraph shall be decided by the Court.

Article 22 – Election of judges

- The judges shall be elected by the Parliamentary Assembly with respect to each High Contracting Party by a majority of votes cast from a list of three candidates nominated by the High Contracting Party.
- The same procedure shall be followed to complete the Court in the event of the accession of new High Contracting Parties and in filling casual vacancies.

Article 23 – Terms of office

- The judges shall be elected for a period of six years. They may be re-elected. However, the terms of office of one-half of the judges elected at the first election shall expire at the end of three years.
- The judges whose terms of office are to expire at the end of the initial period of three years shall be chosen by lot by the Secretary General of the Council of Europe immediately after their election.
- In order to ensure that, as far as possible, the terms of office of one-half of the judges are renewed every three years, the Parliamentary Assembly may decide, before proceeding to any subsequent election, that the term or terms of office of one or more judges to be elected shall be for a period other than six years but not more than nine and not less than three years.
- In cases where more than one term of office is involved and where the Parliamentary Assembly applies the preceding paragraph, the allocation of the terms of office shall be effected by a drawing of lots by the Secretary General of the Council of Europe immediately after the election.
- A judge elected to replace a judge whose term of office has not expired shall hold office for the remainder of his predecessor's term.
- The terms of office of judges shall expire when they reach the age of 70.
- The judges shall hold office until replaced. They shall, however, continue to deal with such cases as they already have under consideration.

Article 24 – Dismissal

No judge may be dismissed from his office unless the other judges decide by a majority of two-thirds that he has ceased to fulfill the required conditions.

Article 25 – Registry and legal secretaries

The Court shall have a registry, the functions and organization of which shall be laid down in the rules of the Court. The Court shall be assisted by legal secretaries.

Article 26 – Plenary Court

The plenary Court shall:

- elect its President and one or two Vice-Presidents for a period of three years; they may be re-elected;
- set up Chambers, constituted for a fixed period of time;
- elect the Presidents of the Chambers of the Court; they may be re-elected;
- adopt the rules of the Court, and
- elect the Registrar and one or more Deputy Registrars.

Article 27 – Committees, Chambers and Grand Chamber

- To consider cases brought before it, the Court shall sit 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.

- There shall sit as an ex officio member of the Chamber and the Grand Chamber the judge elected in respect of the State Party concerned or, if there is none or if he is unable to sit, a person of its choice who shall sit in the capacity of judge.
- The Grand Chamber shall also include the President of the Court, the Vice-Presidents, the Presidents of the Chambers and other judges chosen in accordance with the rules of the Court. When a case is referred to the Grand Chamber under Article 43, no judge from the Chamber which rendered the judgment shall sit in the Grand Chamber, with the exception of the President of the Chamber and the judge who sat in respect of the State Party concerned.

Article 28 – Declarations of inadmissibility by committees

A committee may, by a unanimous vote, declare inadmissible or strike out of its list of cases an application submitted under Article 34 where such a decision can be taken without further examination. The decision shall be final.

Article 29 – Decisions by Chambers on admissibility and merits

- If no decision is taken under Article 28, a Chamber shall decide on the admissibility and merits of individual applications submitted under Article 34.
- A Chamber shall decide on the admissibility and merits of inter-State applications submitted under Article 33.
- The decision on admissibility shall be taken separately unless the Court, in exceptional cases, decides otherwise.

Article 30 – Relinquishment of jurisdiction to the Grand Chamber

Where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or the protocols thereto, or where the resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court, the Chamber may, at any time before it has rendered its judgment, relinquish jurisdiction in favour of the Grand Chamber, unless one of the parties to the case objects.

Article 31 – Powers of the Grand Chamber

The Grand Chamber shall:

- determine applications submitted either under Article 33 or Article 34 when a Chamber has relinquished jurisdiction under Article 30 or when the case has been referred to it under Article 43; and
- Consider requests for advisory opinions submitted under Article 47.

Article 32 – Jurisdiction of the Court

- The jurisdiction of the Court shall extend to all matters concerning the interpretation and application of the Convention and the protocols thereto which are referred to it as provided in Articles 33, 34 and 47.
- In the event of dispute as to whether the Court has jurisdiction, the Court shall decide.

Article 33 – Inter-State cases

Any High Contracting Party may refer to the Court any alleged breach of the provisions of the Convention and the protocols thereto by another High Contracting Party.

Article 34 – Individual applications

Chart of Declarations under former Articles 25 and 46 of the ECHR

The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.

Article 35 – Admissibility criteria

- The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken.
- The Court shall not deal with any application submitted under Article 34 that:
 - ✓ is anonymous; or
 - ✓ is substantially the same as a matter that has already been examined by the Court or has already been submitted to another procedure of international investigation or settlement and contains no relevant new information.
- The Court shall declare inadmissible any individual application submitted under Article 34 which it considers incompatible with the provisions of the Convention or the protocols thereto, manifestly ill-founded, or an abuse of the right of application.
- The Court shall reject any application which it considers inadmissible under this Article. It may do so at any stage of the proceedings.

Article 36 – Third party intervention

- In all cases before a Chamber or the Grand Chamber, a High Contracting Party one of whose nationals is an applicant shall have the right to submit written comments and to take part in hearings.
- The President of the Court may, in the interest of the proper administration of justice, invite any High Contracting Party which is not a party to the proceedings or any person concerned who is not the applicant to submit written comments or take part in hearings.

Article 37 – Striking out applications

- The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that:
 - ✓ the applicant does not intend to pursue his application; or
 - ✓ the matter has been resolved; or
 - ✓ for any other reason established by the Court, it is no longer justified to continue the examination of the application.

However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the protocols thereto so requires.

- The Court may decide to restore an application to its list of cases if it considers that the circumstances justify such a course.

Article 38 – Examination of the case and friendly settlement proceedings

- If the Court declares the application admissible, it shall:
 - ✓ pursue the examination of the case, together with the representatives of the parties, and if need be, undertake an investigation, for the effective conduct of which the States concerned shall furnish all necessary facilities;
 - ✓ place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for human rights as defined in the Convention and the protocols thereto.
- Proceedings conducted under paragraph 1.b shall be confidential.

Article 39 – Finding of a friendly settlement

If a friendly settlement is effected, the Court shall strike the case out of its list by means of a decision which shall be confined to a brief statement of the facts and of the solution reached.

Article 40 – Public hearings and access to documents

- Hearings shall be in public unless the Court in exceptional circumstances decides otherwise.
- Documents deposited with the Registrar shall be accessible to the public unless the President of the Court decides otherwise.

Article 41 – Just satisfaction

If the Court finds that there has been a violation of the Convention or the protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.

Article 42 – Judgments of Chambers

Judgments of Chambers shall become final in accordance with the provisions of Article 44, paragraph 2.

Article 43 – Referral to the Grand Chamber

- Within a period of three months from the date of the judgment of the Chamber, any party to the case may, in exceptional cases, request that the case be referred to the Grand Chamber.
- A panel of five judges of the Grand Chamber shall accept the request if the case raises a serious question affecting the interpretation or application of the Convention or the protocols thereto, or a serious issue of general importance.
- If the panel accepts the request, the Grand Chamber shall decide the case by means of a judgment.

Article 44 – Final judgments

- The judgment of the Grand Chamber shall be final.
- The judgment of a Chamber shall become final:
 - ✓ when the parties declare that they will not request that the case be referred to the Grand Chamber; or
 - ✓ three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or
 - ✓ when the panel of the Grand Chamber rejects the request to refer under Article 43.
- The final judgment shall be published.

Article 45 – Reasons for judgments and decisions

- Reasons shall be given for judgments as well as for decisions declaring applications admissible or inadmissible.
- If a judgment does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

Article 46 – Binding force and execution of judgments

- The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
- The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.

Article 47 – Advisory opinions

- The Court may, at the request of the Committee of Ministers, give advisory opinions on legal questions concerning the interpretation of the Convention and the protocols thereto.
- Such opinions shall not deal with any question relating to the content or scope of the rights or freedoms defined in Section I of the Convention and the protocols thereto, or with any other question which the Court or the Committee of Ministers might have to consider in consequence of any such proceedings as could be instituted in accordance with the Convention.
- Decisions of the Committee of Ministers to request an advisory opinion of the Court shall require a majority vote of the representatives entitled to sit on the Committee.

Article 48 – Advisory jurisdiction of the Court

The Court shall decide whether a request for an advisory opinion submitted by the Committee of Ministers is within its competence as defined in Article 47.

Article 49 – Reasons for advisory opinions

- Reasons shall be given for advisory opinions of the Court.
- If the advisory opinion does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.
- Advisory opinions of the Court shall be communicated to the Committee of Ministers.

Article 50 – Expenditure on the Court

The expenditure on the Court shall be borne by the Council of Europe.

Article 51 – Privileges and immunities of judges

The judges shall be entitled, during the exercise of their functions, to the privileges and immunities provided for in Article 40 of the Statute of the Council of Europe and in the agreements made there under.