COUNCIL OF EUROPE CONSEIL DE L'EUROPE

DH-SYSC-II(2018)22

18/09/2018

STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

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COMMITTEE OF EXPERTS ON THE SYSTEM OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS
(DH-SYSC)

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DRAFTING GROUP ON THE PLACE OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS IN THE EUROPEAN AND INTERNATIONAL LEGAL ORDER (DH-SYSC-II)

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Notes on the draft chapter of Theme 2:

Challenge of the interaction between the Convention and other international human rights instruments to which the Council of Europe member States are parties

(as submitted by the Rapporteur, Ms Sofia KASTRANTA, in view of the 4th meeting of the DH-SYSC-II, 25-28 September 2018)

DH-SYSC-II

Draft chapter of Theme 2: Challenge of the interaction between the Convention and other international human rights instruments to which the Council of Europe Member States are parties

Introduction

- Definition of the object of the study: United Nations Human Rights Treaties (and the practice of relevant treaty-based bodies). To a great extent, emphasis shall be given to the Human Rights Committee (closer affinity between the ICCPR + the ECHR, and the fact that the HRCommittee is the treaty body that has by far dealt with more communications.
- Are excluded from the study: i) other UN procedures dealing with human rights ii) the EU (different theme) iii) other Council of Europe instruments (European Social Charter, FCNM)
- Brief presentation of the UN human rights treaty system + historical approach to the subject of its coexistence with the ECHR since the 1960s

I. Analysis of the texts / the case-law

A "*twofold risk that international procedures for the guarantee of human rights operate in different and possibly divergent ways; and that conflicts may arise on account of the different definitions given in the various legal instruments established for the protection of human rights and freedoms*" (*Problems arising from the co-existence of the United Nations Covenants on Human Rights and the European Convention on Human Rights,* Memorandum prepared by the Directorate of Human Rights, Doc. DH/Exp (67) 6, 6 October 1967)

A. Concerns arising from the coexistence of different systems of control: (possibly) diverging approaches to admissibility.

By "admissibility", reference is made to the procedural requirements that need to be present for either a judicial organ, such as the ECtHR, or a (quasi-judicial) body, such as the UN treaty-based bodies, to consider the substance of a given case. These requirements are set out in the relevant applicable treaty, including any specific optional protocols.

This part will endeavour to highlight any divergences between the two systems as regards issues related to admissibility, such as (a) categories of applicants (b) victim status, (c) procedural grounds for inadmissibility (anonymous applications, non-exhaustion of domestic remedies, time-limit/no time-limit, substantially the same with previous/parallel applications, abuse of the right of application), (d) questions of jurisdiction (rationae personae, loci, materiae, temporis), inadmissibility based on the merits (ECHR: manifestly ill-founded, no significant disadvantage).

B. Concerns arising from the coexistence of different normative sets: (possibly) diverging interpretation of substantial rights

Rights that do not coincide or are described differently (ex. limitations) or are interpreted differently

Article 15 ECHR/Article 4 ICCPR

II. Challenges and possible solutions

The practice so far is not overly alarming, but the risk of fragmentation is present.

Different definitions are bound to make room for different interpretations and, thus, possibly for diverging implementation (ex., *Correia de Matos* art. 14 par. 1 ICCPR/6 par. 3 ECHR, ECtHR Decision 2001, Views HRCommittee 2006, ECtHR/Grand Chamber 2018)

The coexistence of different systems of control without (due) consideration (ICCPR) for precedents in other organs (ECtHR) leads to conflicting decisions. In a few cases (ex. *Mann Singh*), the UN treaty bodies arrived at a different conclusion although specifically referring to the ECtHR.

A solution could be the reinforcement of the "dialogue of judges". However, there is an asymmetry in mutual citing between the European Court and UN treaty bodies, for various reasons (difference in texts, universal versus regional), even if the fact that the case-law of other organs is not openly mentioned does not mean it was not considered.

At the UN level (where a risk of incoherence between the different treaty bodies is also present) inter-Committee Meetings and Chairpersons Meetings between the different UN treaty bodies are held. Also, consultations within and among the treaty bodies, expert meetings and briefings, including with regional organs (InterAmerican Court, ...).

However, convergence of jurisprudence can only be possible when the relevant texts + the circumstances of specific cases allow for it.