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**Are the New Filtering Measures of
Applications by the European Court of
Human Rights Effective?**

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Are the New Filtering Measures of Applications by the European Court of Human Rights Effective?

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Abstract

This article studies the contents and effects of new measures of this reform launched by the European Court of Human Rights for improving its filtering capacity of applications, including the new judicial formations, the new criterion of admissibility introduced by the Protocol No.14 and Protocol No.15, the priority policy and the filtering section. The statistics around the implementation of the measures show that the new judicial formations and the filtering section are effective in reducing the number of pending applications and in improving the filtering ability of applications by the Court; The priority policy and pilot-judgment procedure are useful for optimizing resources, for focusing energy on the most important applications that require a thorough review; The new admissibility criterion should be studied after its application by the single-judge and the three- judges committee. The conclusion is drawn that the new reform are effective for improving the filtering capacity of applications, but the Court still faces the problems and needs to advance the reform.

Keywords: filtering capacity of applications, European Court of Human Rights, European Convention on Human Rights, admissibility criterion

Introduction

The European Court of Human Rights (hereafter referred to as the Court) is overwhelmed by the increasing applications, the filtering capacity of applications by the Court is reduced by a large number of applications. The court and the Council of Europe launched reforms to solve this problem. The most recent reform through Protocol No. 14 to the Convention (hereinafter referred to as Protocol No. 14) is under implementation. With this new reform, the Court focuses on the development of the filtering capacity of applications by the Court as the largest part of individual applications are declared inadmissible or struck out of the Court's list of cases. According to the reports of the Court, 90% of applications are rejected, inadmissible or repetitive (Council of Europe, 2004). Protocol No. 14 had not entered into force till Russia had approved it on June 1, 2010. The Court and the Council of Europe made the Protocol No. 14 bis on May 27, 2009 to fulfil a part of the content of Protocol No. 14, and the Court has adopted the priority policy in June 2009 as the influence of Protocol No.14 bis was limited. In order to advance the reform of the Court, the filtering section was created on January 1, 2011, the High Level conference on the future of the European Court of Human Rights was held in Brighton on April 19 and 20, 2012. The Protocol No. 15 has been adopted on May 16, 2013.

This reform ensuring the long-term effectiveness of the Court has affected several areas of the Convention system. This article focuses on new measures during the period of May 2004 to January 2013 for improving the filtering capacity of applications, introduces their contents, and studies mainly their efficiencies.

There are some researches related to the content of the new reform and Protocol No. 14, some trace the outline of the new procedure before the Court after Protocol No. 14, but it does not look particularly new filtering measures of applications, not reflect the recent measures launched by the Court (Francesco, 2007) The works 'Protocol 14 and new Strasbourg procedures: towards greater efficiency? And at what price?' can't answer the question about the effectiveness of the whole new reform (Harvey and Beernaert, 2004). A recent book offers an analysis of the filing of an application and its treatment, of all conditions of admissibility with some recent jurisprudence, and also the national specificities, but not of the effect of the new filtering measures of applications (Pascal and Elisabeth, 2011). However, little works looking for the influences and effect of new filtering measures of applications.

Research on the effect of the new filtering measures of applications can't only fill a need academically, but also has a practical value. The Court and the Council of Europe can follow their train of thought and strategy of reform if the new measures are effective, and they have to adjust the strategy if the new procedures can't solve the filtering problems of the Court.

This paper compares the statistics round the new reform, especially after the implementation of Protocol No. 14. The amounts of individual applications for certain period and the speed of the filtering are two important criteria to

measure the effect of the new measures. In the following part of this article, it introduces the background of the new reform, tells the development of new filtering measures of applications. Then it studies the effect of these new measures. After reviewing the content and the effect of this new reform, it makes the conclusion.

Development of New Filtering Measures of Applications

The new filtering measures of applications mainly include the new measures introduced by Protocol No. 14 and *No. 15*, introduced by Protocol No. 14 bis, and the others such as the priority policy and the filtering section.

New Filtering Measures of Applications Made by Protocol No. 14 and No. 15

According to the composition of applications before the Court, more than 90% are inadmissible, for example, in 2003, 17 270 applications were declared inadmissible or struck out by the Court, it takes 96% of the whole cases, only 4% of the cases were declared admissible(Council of Europe, 2004). Protocol No. 14 is not intended to make fundamental changes to the system established by the Convention, but to improve its flexibility and efficiency: on the one hand, the Court has to filter the applications more rapidly and effectively within the limited resources, on the other hand, it tries to optimize resources for dealing with the most important applications that require further examination.

To simplify the proceedings and improve the efficiency of the Court, the changes made by Protocol No. 14 are as follows:

Firstly, the Court created a new judicial formation: the single-judge. Pursuant to the Articles 4, 6, 7 of Protocol No. 14, the single-judge may declare an individual application inadmissible or struck it out where such decision can be taken without further examination. In addition, in order to protect judicial impartiality, the single-judge is assisted by rapporteurs who shall function under the authority of the President of the Court, they are part of the Registry of the Court. The capacity of three-judges committee is enlarged, it is responsible for filtering the repetitive applications.

Secondly, a new admissibility criterion is added to the criteria specified in paragraph 3 of Article 35 of the Convention to raise the threshold of admissibility. This amendment allows the Court to concentrate more time and resources to the cases that need a further examination. The new admissibility criterion includes two aspects: a. The Court may declare an individual application inadmissible for the reason that the applicant has not suffered a significant disadvantage; b. The Court may declare an individual application admissible even if the applicant has not suffered a significant disadvantage: 1) as a result of compliance with human rights guaranteed by the Convention and the Protocols thereto requires an examination of the application on the merits, 2) provided that the case has not been duly considered by a domestic tribunal. For a period of two years following the entry into force of the protocol I No. 14, only the chambers and the grand chamber of the Court may

apply the new admissibility criterion (Council of Europe, 2004). Protocol No. 15 deletes the words ‘and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal of the sub-paragraph *b* of Article 35, paragraph 3 of the Convention and shortens the period of application (Council of Europe, 2013). There were several criticisms of the new admissibility criterion after its creation, especially from the perspective of the victim, it is interpreted as a limitation of the right of appeal (Marla, 2007).

Thirdly, some flexible rules such as the third party intervention, the friendly settlement and the enforcement of the investigation power of the Court are used to improve the flexibility of the control system.

The Protocol No. 14 could not be valid till Russia has ratified it in 2010. This aggravated the situation in which the Court is faced considering the accelerated influx of new applications and the ever-increasing number of pending applications. The High Contracting Parties have agreed to adopt a Protocol No. 14 bis that would be most rapidly effective in increasing the Court’s case-processing capacity, as a provisional interim measure.

New Filtering Measures of Applications Made by Protocol No. 14 Bis

The Protocol No. 14 bis entered into force on October 1, 2009, Article 3 of this Protocol adds the single-judge as a judicial formation of the Court, the power of the three-judges committee is extended according with its article 4, the committee could not only declare individual applications inadmissible, but also, in a joint decision, declare individual applications admissible and decide on their merits sometimes. The Protocol No. 14 bis let the single-judge and the three-judges committee become to the main judicial formations for filtering the individuals applications.

In addition, article 6 and 7 of this Protocol provides facilities for entry into force, it may enter into force after three High Contracting Parties to the Convention have expressed their consent to be bound by the Protocol.

Priority Policy

In 2009, the Court created a new policy that gives priority to particularly urgent and important cases. The Court established the criteria correspondingly, it classifies the applications into seven categories, it lists the urgent applications in particular risk to life or health of the applicant, other circumstances linked to the personal or family situation of the applicant as the Category I, the applications raising questions capable of having an impact on the effectiveness of the Convention system or applications raising an important question of general interest and inter-State cases as Category II and the applications which on their face raise as main complaints issues under Articles 2, 3, 4 or 5 § 1 of the Convention as Category III etc. (ECHR,2010).

Filtering Section

One of the main challenges facing the Court is the efficient filtering out of the very large number of inadmissible cases brought before it each year.

According to the statics of the Court, the very large numbers of inadmissible cases are from five of the highest case-count countries: Russia, Turkey, Romania, Ukraine and Poland. These countries account for over half of the cases pending before the Court. For example, among the total number of pending cases (119, 300), the number of pending cases against Russia is 33,500, the number of cases pending against Turkey is 13,100, the number of pending cases against Ukraine is 10,000, 9,800 pending cases against Romania and 4,750 pending cases against Poland till December 31, 2009(ECHR,2011).

The Filtering Section dealing with cases from five of the highest case-count countries has been in operation since the beginning of 2011. The applications arrive at the Registry of the Court, the Registry assigns them to the filtering section if the respondent states are Russia, Turkey, Romania, Ukraine and Poland; then the filtering section assigns these applications to the judicial formations like the single-judge, the three-judges committee or the chamber for the following treatments.

Effect of the New Filtering Measures of Applications

Following the temporal order of the implementation of the new procedures, this part studies the effect of new measures of applications carried by the Protocol No. 14 bis firstly, the effect of other new procedures including the priority policy and the filtering section secondly, the effect of new procedures carried by the Protocol No. 14 eventually.

Effect of the New Procedures Carried by the Protocol No. 14 Bis

Protocol No. 14 bis entered in force on October 1, 2009, and ceased to be applied provisionally on June 1, 2010. The number of new applications allocated to a judicial formation, of pending applications, of the applications disposed of judicially and the length of time to process the cases become the important index to measure the filtering capacity of the Court.

In 2009, 57,100 applications were allocated to a judicial formation, an overall increase of 15% compared to 49,850 in 2008(ECHR, 2009).

The number of pending applications before a judicial formation increased by 23% in 2009 from 97,300 to 119,300. Among the 119,300 pending applications, 74,900 were allocated to the judicial formation like the three-judges committee and the single-judge, 44, 400 were attributed to the chamber(ECHR,2010). The number of the pending applications before a judicial formation increased by 17% in 2010, from 119,300 to 139,650. Among the 139,650 pending applications, 88,400 were allocated to the single-judge, 4,100 were allocated to the three-judges committee and 47,150 were allocated to the chamber(ECHR,2011) In 2010, 63.3% of pending applications were allocated to the single-judge, correspondingly the proportion of chamber's work is 33.8%. It is obvious that the new judicial formations shared most filtering work of the Court, particularly the single-judge that has gradually

taken the significant role, more than 60% of cases were assigned to the single-judge.

A large number of pending applications before a judicial formation means that the Court is overloaded, this situation improved at the end of 2010, the ratio of increase in pending applications in 2010 is 17%, slightly less than in 2009(23%). It seems that the filtering capacity of applications has developed.

In 2008, 30,163 applications were declared inadmissible or struck out by a decision or judgment; in 2009, the figure was 33,065, an increase of 10% over the figure of 2008. In 2009, the Judgments were delivered in respect of 2,395 applications compared with 1,880 in 2008 – an increase of 27 % (ECHR, 2009). In 2010, 41,183 applications were decided by a judgment or decision, an increase of 16% compared to 35,460 in 2009. 38,576 applications were declared inadmissible or struck out by a decision, an increase of 17% compared to 33,065 in 2009((ECHR, 2010).

According to the statistics of 2009, 32% of cases allocated to a chamber have been pending for less than one year, 25% for between one and two years, 43% for more than two years. Meanwhile, 38% of cases allocated to a committee or single-judge have been pending for less than one year, 29% for between one to two years and 33% for more than two years. (ECHR, 2010). Generally, the time elapsed since the date of allocation to a three-judges committee or single-judge is shorter than to a chamber. It means the committee and single-judge formation increased the speed of processing the cases, it could accelerate the filtering progress and promote the development of the control system of the Convention.

The statistics show the new measures introduced by the Protocol No.14 bis are effective.

Effect of the Priority Policy

These years the Court focused its resources on cases of the first three categories: the number of applications processed in these categories in 2010 was 2,206, an increase of 68% compared to 2009 (1,324). The number of applications processed in these categories in 2011 is 2,327, an increase of 5% compared to 2010(2,206). On December 31, 2012 there were 6,568 applications in these categories, the number of priority applications dealt with in 2012 increased by 30% compared to 2011(2,327) (ECHR, 2010, 2012). The statistics 2009 -2012 show that applications of the categories I, II and III are treated first, the policy is useful to treat more urgent cases.

Formation of the Pilot-judgment Procedure and its effect

The Court has developed a special procedure known as the pilot-judgment procedure as a means of dealing with large groups of identical cases that derive from the same underlying problem.

Article 61 of the Rules of Court provides the content, conditions of application of the pilot-judgment procedure: the Court may initiate a pilot-judgment procedure and adopt it where the facts of an application reveal in the Contracting Party concerned the existence of a structural or systemic problem

or other similar dysfunction which has given rise or may give rise to similar applications. This procedure can be initiated by the Court of its own motion or at the request of one or both parties. The Court shall first seek the views of the parties whether the application under examination results from the existence of such a problem or dysfunction in the Contracting Party concerned and on the suitability of processing the application in accordance with that procedure before its launch. Any application selected for pilot-judgment treatment shall be processed as a matter of priority in accordance with rule 41 of the Rules of Court (ECHR, 2012).

The Court shall in its pilot-judgment procedure identify both the nature of the structural or systemic problem or other dysfunction as established as well as the type of remedial measures which the Contracting Party concerned is required to take at the domestic level by virtue of the operative provisions of the judgment. Such remedial measures can be adopted within a specified time. The Court can also adjourn the examination of all similar applications pending the adoption of the remedial measures required by virtue of the operative provisions of the pilot-judgment procedure.

The Court has used this procedure flexibly since it delivered the first pilot judgment in 2004, after a period of application of this procedure, the Court has developed some case law, the case law and the interpretations of the Convention or its Protocols are beneficial for filtering the repetitive applications, dealing with the same cases and the remedial measures taken by the Contracting Party concerned, are also useful for preventing the same problems to happen. For example, in the case of *Broniowski v. Poland*, the Court decided to apply pilot-judgment procedure as it found that: ‘The violation of the applicant's right guaranteed by Article 1 of Protocol No. 1 originated in a widespread problem which resulted from a malfunctioning of Polish legislation and administrative practice (*Broniowski v. Poland*, 2004).

The Effect of the Filtering Section

At the end of June 2012, the filtering section had recorded 23,077 new applications, this is an increase of 6% compared to 2011(21,859). During the same period, 23,741 applications against the five states have been declared inadmissible or struck out by a single-judge, an increase of 109% compared to 2011(11,369)(Pavlına and ECHR,2012).

Till January 1, 2011, 59,669 applications were pending before the single-judge formation, till June 1, 2011, 62 506, till January 1, 2012, 56 098, and till June 1, 2012, 47 834. (Pavlına and ECHR, 2012)

Statistics show that the creation of the filtering section reduced the duration of filtering the applications, it reduces the number of pending applications since June 2011 that promotes processing cases and improves the ability to filter the applications by the Court.

Effect of New Filtering Measures Introduced by Protocol No. 14

Protocol No. 14 came into force on June 1, 2010. Les statistics before and after the implementation of Protocol No. 14 are important to examine its effect

and influence. The changes in the number of new applications assigned to a judicial formation is an important part of the investigation and in the number of applications decided, of pending applications may measure the filtering capacity of applications by the Court.

In 2010, 61,300 applications were allocated to a judicial formation, an overall increase of 7% compared to 57,100 in 2009. In 2011, 64,500 applications were allocated to a judicial formation, an increase of 5% compared to the figure of the previous year. (ECHR, 2010, 2011).

The number of applications changed as follow: In 2009, the total number of applications decided is 35,460, including 33,065 declared inadmissible or struck out by a decision, 2,395 applications were decided by a judgment, while 93% of applications were decided by a decision. In 2010, the total number of applications decided is 41,183, an increase of 16% compared to the number of 2009 (35,460), 38,576 applications were declared inadmissible or struck out by a decision and 3,876 applications were decided by a judgment delivered. Of the total number, the number of applications declared inadmissible or struck out by a decision of 2010 increased from 17% compared to the number of 2009. In 2011, 50,677 applications were declared inadmissible or struck out by a decision and 1,511 applications were decided by a judgment delivered. Of the total number (52,188 applications decided), the number of applications declared inadmissible or struck out by a decision has increased, while 97% of applications were delivered by a decision. Comparing the figures of 2011 and 2010, there was a 31% increase in the number of applications declared inadmissible or struck out by a decision, and also a 27% increase in the number of applications decided by a judgment delivered. In 2012, the total number of applications decided is 87,879, an increase of 68% compared to the number of 2011 (52,188), 86,201 applications were declared inadmissible or struck out by a decision, an increase of 70% compared to the number of 2011 (50,677) and 1,678 applications were decided by a judgment delivered, an increase of 11% compared to the number of 2011 (1,511). (ECHR, 2010, 2011, 2012).

It is clear that the Court still faced the burden of growing applications, approximately 168 applications are allocated to a judicial formation per day in 2010, about 177 applications in 2011 and 178 in 2012. The number of applications declared inadmissible or struck out by a decision increased since the implementation of Protocol No. 14, the new judicial formations work well for filtering the applications, they shared much of the work of the Court, and especially the single-judge functioned well since its creation.

In early 2010, 119,300 applications were pending before a judicial formation, and at the end of this year, pending applications increased by 17%, there were 4,100 applications pending before the three-judges committee, while 88,400 applications were pending before the single-judge (ECHR, 2010), by the end of 2011, the number of pending applications reached up to 151,600, an increase of 9% compared to the same period in 2010, however at the end of 2012, the number of pending cases has decreased 16%, it is down to 128,100. At the end of 2010, and 25,200 applications were pending before the three-judges committee at the end of 2012, and 59,850 applications were still pending

before the single-judge.(ECHR,2012).The pending applications of the Court has declined in 2012, it proves that the new reform of the judicial formations are useful to reduce the number of pending applications and accelerate the filtering efficiency of applications by the Court; on the other hand, the Court still faces a heavy burden and that it must continue to accelerate the filtering efficiency.

The Court developed the ‘practical guide on admissibility criterion’ for implementation of the new admissibility criterion. In June 2012, the Court issued a Research Report which has analyzed the jurisprudences systematically and synthesized the jurisprudential principles. According to the report, over the two-year period provided for by Article 20 § 2 of Protocol No. 14, the Court’s chambers have applied the new admissibility criterion to 26 complaints made under Articles 6 and 13 of the Convention and Article 1 of Protocol No. 1, with the majority of cases falling under Article 6.(ECHR,2012)

The applications affected by the new admissibility criterion can be classified into two categories: these are the cases applying the new admissibility criterion, and cases rejecting the new admissibility criterion. 26 applications are inadmissible in the absence of a ‘significant disadvantage’ due to the application of the new admissibility criteria from June 1, 2010 to June 1, 2012. The new criterion has been considered but rejected by the Court in a further 16 cases over the two years(ECHR,2012). However, the reasons to exclude the application of the new criterion were not clearly explained and systematized.

The Court has developed a standard for distinguishing whether the applicant has suffered a “significant disadvantage” or not. The standard requires that a violation of a right, however real from a purely legal point of view, should attain a minimum level of severity to warrant consideration by an international Court. (Giusti v. Italy, Shefer v. Russia, etc.).

Although the ‘practical guide on admissibility criterion’ has been developed, although the connotation of the new admissibility criterion today with the jurisprudential interpretation is clearer than that of June 1, 2010 (Protocol No. 14 came into force), the Court still faces difficulties in implementing the new admissibility criterion. The Protocol No. 15 makes some change of the new admissibility criterion.(ECHR,2013).

Conclusion

The Court launched a new reform since 2004 to strengthen the long-term effectiveness of the control system established by the Convention. It is necessary to develop new measures to improve the filtering capacity of applications because of the difficulties encountered by the Court to deal with the ever increasing applications. The new filtering measures mainly consist of the new judicial formations, the new admissibility criterion, the priority policy and the filtering section.

Statistics round the implementation of the new measures show that the new judicial formations and the filtering section are effective in reducing the

number of pending applications and improve the filtering ability of applications by the Court; The priority policy and pilot -judgment procedure are useful for optimizing resources, focusing energy on the most important applications that require a thorough review and strengthen the long-term effectiveness of the control system established by the Convention.

Since the first two years following the introduction of the new admissibility criterion, the Court has developed the jurisprudential principles relating to this new criterion gradually. It seems that the result of the new admissibility criterion's application is positive. However, it must continue to study its effect particularly after its application by the single-judge and the three- judges committee.

In conclusion, the new filtering measures of applications by the Court are effective in improving the filtering capacity of applications and enhance the control system established by the Convention, but the Court needs further efforts in this direction.

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