



Opinion 271 (2009)¹

Draft Protocol No. 14 bis to the Convention for the Protection of Human Rights and Fundamental Freedoms

Parliamentary Assembly

1. The Parliamentary Assembly attaches the utmost importance to the functioning of the European Court of Human Rights (the Court), whose effectiveness is being seriously threatened in the face of, *inter alia*, an ever-accelerating influx of new applications and a constantly growing backlog of cases. It therefore welcomes the initiative taken by the Committee of Ministers to adopt, as soon as practicable, draft Protocol No. 14 *bis* which will increase the Court's case-processing capacity pending entry into force of Protocol No. 14 to the European Convention on Human Rights (ETS No. 194).
2. The Assembly also notes, in this connection, the parallel initiative to foresee the provisional application of provisions in Protocol No. 14 *bis* by means of a declaration to be made by a conference of High Contracting Parties to the European Convention on Human Rights (ETS No. 5) on the margins of the 119th Ministerial Session in Madrid on 12 May 2009, an initiative to which it fully subscribes. This would permit the Court to apply these provisions to certain states parties to the Convention prior to or independently of the entry into force of Protocol No. 14 *bis*.
3. The Assembly recalls, in this connection, the Warsaw Declaration of 17 May 2005, in which all the heads of state and government of the Council of Europe member states strongly committed themselves to a long-term strategy to secure the effectiveness of the Convention system, taking into account the initial effects of Protocol No. 14 and other decisions taken by the Committee of Ministers in May 2004. The non-entry into force of Protocol No. 14 therefore remains an issue of major concern.
4. In this context, the Assembly strongly deplores the position taken by the Russian Federation's State Duma to refuse to provide its assent, since December 2006, to the ratification of Protocol No. 14 to the Convention, which is an important amending protocol that can only enter into force when all states parties to the Convention have ratified it. By so doing, the Russian State Duma has, in effect, considerably aggravated the situation in which the Court has found itself, and has also deprived persons within its jurisdiction of the benefits of a streamlined case-processing procedure before the Court. The State Duma is urged, in the strongest possible terms, to recognise that the changes of the control system envisaged in Protocol No. 14 (and Protocol No. 14 *bis*), will permit the Court to deal with applications in a timely fashion so that it can concentrate on important cases requiring in-depth examination.
5. As entry into force of Protocol No. 14 to the Convention would be the most effective way to improve the difficult situation in which the Court finds itself, as well as that of applicants before it, the Assembly again urges the Russian State Duma to reconsider, without further delay, its refusal to provide assent for Russia to ratify this protocol.
6. However, the Assembly considers draft Protocol No. 14 *bis* as a good interim solution to bring into effect, quickly, the temporary application of two provisions extracted from Protocol No. 14 to the Convention. It will be an additional protocol, which does not require ratification by all states parties to the Convention. It will enable single-judge formations to deal with plainly inadmissible applications, presently handled by committees

1. *Assembly debate* on 30 April 2009 (16th Sitting) (see [Doc. 11864](#), request for an opinion, and [Doc. 11879](#), report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr De Vries). *Text adopted by the Assembly* on 30 April 2009 (16th Sitting).



of three judges, and will also extend the competence of three-judge committees to handle clearly well-founded and repetitive cases deriving from structural or systemic defects which are presently handled by Chambers of the Court, composed of seven judges. Protocol No. 14 *bis* will cease to exist once Protocol No. 14 to the Convention enters into force.

7. The Assembly appreciates the Committee of Ministers' recourse to the Assembly's urgent procedure provision, which has permitted it, at short notice, to take a stand on an important subject which is still under active consideration at the intergovernmental level.

8. The Assembly recommends to the Committee of Ministers that the following amendments be made to draft Protocol No. 14 *bis*:

8.1. in the preamble, insert a new third paragraph that would read: "3. Having regard to [Opinion 271 \(2009\)](#), adopted by the Parliamentary Assembly of the Council of Europe on 30 April 2009;";

8.2. in Article 1 replace "Parties" by "the High Contracting Parties";

8.3. in Article 6, paragraph 1, replace "member states" by "High Contracting Parties";

8.4. in Article 6, paragraph 2, replace "member state" by "High Contracting Party to the Convention", replace "by it" by "by this Protocol" and add, after the words "into force", the words "for that High Contracting Party";

8.5. remove the square brackets from Article 7; replace "of the Protocol" by "of this Protocol" and replace the words "that it will apply to it" by "that the provisions of this Protocol shall apply to it";

8.6. remove all the square brackets from Articles 8 to 10.

9. As concerns the explanatory report, the Assembly recommends that, when the final version of paragraph 6 is drafted, specific mention be made to the present opinion of the Parliamentary Assembly and the date of its adoption.