



### THE ISSUES OF EUROPEAN PROTECTION OF HUMAN RIGHTS

Inspired by article 3 of the the Statute of the Council of Europe, the European protection of human rights system is based on the European court. Now, even after the reform of 1998, important and more concerning issues are already emerging.

The here resulting issues are rather political, which means that they refer to the states, both individually and collectively to make choices that affect them and the role of the Court and the protection system collective as a whole.

One has to realize that on an international scale the judicial way of protecting human rights is not the norm.

In order to put the Court in the best possible situation, so that it can focus on the most important litigation all have to be examined, it would be necessary to create a European "Parquet", one of whose tasks being to settle the dispute through non-judicial decisions, however, containing an early motivation, which could be submitted for ultimate control over relevance (control "certiorari" in some way) to a judge of the Court.

In addition, the "Parquet" could fulfil a function similar to those assigned to the Advocates-General in the Court of Justice in Luxembourg.

Other important issues, both political and legal, relate to the judicial role of the Court and to the monitoring function assigned to the Committee of Ministers.

This is the case for judgments concerning some type of litigation raising questions of society (such as ethical questions related to genetics) or in relation to politically sensitive issues in a national context (voting rights of prisoners) or deportation or extradition of foreigners whose activities may be harmful to national security.

The States are committed to respect the "rules of the game" in the Convention. Therefore they do not know how to choose "a la carte", which in case law of the Court does not suit them.

The principles of "margin of appreciation" and "subsidiarity" cannot be interpreted as reserving to the states a sort of almost absolute immunity for certain subjects, even if the regulation that concerns the results of decisions made by a democratic legislature.

If this was the case, it would be the end of a set of rights that all European legal systems have to share, under a "public order" common to said systems, which cannot therefore be random or instable.

In terms of execution of judgments, the Committee makes a sort of "institutional move" to give full effect to the commitments of States.

If the Court acts in the logic of the system as the "trial court" about the issues that are called upon to resolve, then the Committee appears to be a real "execution judge" of the judgments of the Court. That jurisdiction gives the Committee a very close to the ultimate "guardian of the European public order" role.

At the end, the main issue seems to be the acceptability of the jurisprudence of the Court by the national suprême courts.

If we can come from the idea that national courts apply in good faith the case law principles established by the Court, then it still remains a fact that different perspectives can be found.