Dottorato di ricerca in Ordine internazionale e diritti umani, Sapienza, Università di Roma - Intercenter, Università di Messina

Ordine internazionale e diritti umani

International Legal Order and Human Rights
Ordenamiento Jurídico Internacional y Derechos Humanos
Ordre juridique international et Droits de l'Homme

PROTOCOL 16 TO THE ECHR: THE EUROPEAN COURT OF HUMAN RIGHTS GOES TO THE HEALER

The European Convention on Human Rights did not contain, at its origin, a provision allowing the European Court of Human Rights to give advisory opinions. Despite the proposals made, it is only with Protocol n. 2 that this Court was first provided with this competence, which was still limited to 'legal questions' asked by the Committee of Ministers. The Court's advisory jurisdiction remained thus exceptionally exercised and marginalised to 'technical' matters and, for several years, only a few questions had been submitted. Protocol n. 16 further conferred to the Court the competence to give advisory opinions on questions of principle relating to the interpretation or application of the rights and freedoms defined in the Convention or its protocols, upon request from the highest courts and tribunals of a High Contracting Party. Differently to Protocol n. 2, this Protocol could represent for the Court the genuine rise of its advisory jurisdiction. The present paper aims to describe the new scenario that this kind of 'juridical revolution' could set up for the European human rights protection system. It examines the benefits that the full exercise of its advisory jurisdiction implies for this Court and for States Parties, as well as the eventual problems it could create. Lastly, this work does not ignore the opportunities that a broader competence could have offered to the system and identifies the missed occasions of Protocol n. 16.