FEES: A BARRIER TO JUSTICE

IMPOSING A FEE ON APPLICANTS TO THE EUROPEAN COURT OF HUMAN RIGHTS MAY DENY VICTIMS OF HUMAN RIGHTS VIOLATIONS ACCESS TO JUSTICE

The 47 governments of the Council of Europe are considering a proposal which would impose an additional barrier for victims of human rights violations to have access to justice.

The proposal under consideration is to impose fees on individuals who file a case with the European Court of Human Rights. The Court is a last resort for individuals seeking redress for alleged violations of their rights under the European Convention on Human Rights.

If a fee is imposed, some people who have been unable to gain justice in their own countries will be denied redress simply because they cannot pay. Lack of funds should never be an obstacle to an individual's access to a remedy for an alleged human rights violation

Even if provisions were put in place to permit the fees to be waived, any such scheme would clearly risk deterring, or even preventing, individuals with well founded claims from reaching the Court.

These are the reasons why some governments and hundreds of non-governmental organizations throughout Europe, including Amnesty International, the AIRE Centre, the European Human Rights Advocacy Centre (EHRAC), Human Rights Watch, the International Commission of Jurists, Interights, Justice and REDRESS are calling for the proposal to be rejected outright by the main decision making body of the Council of Europe, the Committee of Ministers.[1]

The proposal to impose fees, if implemented, would be unprecedented for an international or regional human rights mechanism of redress. Ensuring access to justice for those who are seeking redress for the human rights violations must be the Council of Europe's paramount concern.

The proposal was presented as an effort to address the high number of cases received by the Court which do not meet the established admissibility criteria. It is questionable whether the introduction of fees would alleviate, and not exacerbate, the administrative burdens on the court. The imposition of fees also risks reducing the number of meritorious cases as well, and

[1] For information about NGO opposition to this proposal, see inter alia Joint statement of Amnesty International, The AIRE Centre, EHRAC, Human Rights Watch, the International Commission of Jurists, Interights, Justice, Liberty and Redress which was signed by 156 other NGOs across the Council of Europe Region: Human Rights in Europe: Decision Time on the European Court of Human Rights, AI Index: IOR61/009/2009, available at http://www.amnesty.org/en/library/info/IOR61/009/2009/en, and the contribution of the Conference of International Non-Governmental Organisations (INGOs) of the Council of Europe to the Interlaken Conference on the future of the European Court of Human Rights available at http://www.coe.int/T/NGO/Articles/Contribution_INGO_Conf_Interlaken_en.asp (there are more than 350 INGOs who participate in the INGO Conference).

there are more appropriate means to reduce the number of inadmissible submissions. One example is a new procedure of the Court, only recently put fully into place, to filter applications more efficiently.[2] And both states and the Court itself can do more to ensure that people are informed in a language that they can understand of the requirements for bringing a case before the Court.

Among the specific measures that could reduce inadmissible applications are:

- Ensuring that information about the admissibility criteria is readily available in at least the official language(s) of each of the 47 member states of the Council of Europe.
- Ensuring in all 47 member states of the Council of Europe the availability of independent expert advice for people who seek to file applications to the European Court, which is free of charge to those unable to pay for it.

Moreover, instead of seeking to deter applicants from seeking justice by imposing fees, each of the 47 states should ensure that there are accessible and effective domestic remedies at national level for violations of the rights guaranteed under the European Convention on Human Rights.

If the proposal to impose a fee on applicants to the Court is not rejected immediately, at a minimum the Committee of Ministers should carry out an assessment of the root causes of the problems and the potential impacts of the imposition of a fee system based on the following information before any decision is made:

- The number of applications that were dismissed last year as clearly inadmissible per country and the reason(s) for the inadmissibility;
- The reasons why those who filed inadmissible applications did so: whether the applicants were aware of the admissibility criteria; whether this information was accessible in their national language; whether they were advised by a lawyer or an NGO and if not why not);
- The manner in which clearly inadmissible applications are handled by the Court, and the average time spent by the Registry and Judges, under the new one-judge system and under the previous system;
- The likely cost of administering a fee system (and the basis for such estimate);
- The likely time needed, per case, to operate a fee system (and the basis of such estimate);
- The sources of the required financial and human resources to operate a fee system;
- The availability of the required financial and human resources within the Court to operate a fee system;
- The potential difficulties applicants could face, including arranging payment of a fee in a required currency;
- A cost-benefit analysis of such a mechanism, based on the information above.

A decision to recommend the imposition of fees on applicants without this information would be political rather than strategic. It would not be based on an informed analysis and transparent evaluation of both the root causes of the problem and the impact of recent reforms. It could drain the Court of human and financial resources while deterring individuals with well-founded human rights claims from seeking redress before the Court.

[2] Under this new procedure, which came into force on 1 June 2010 with respect to all applications received by the Court, one judge (rather than 3) makes decisions on clearly in admissible cases.