

It is sometimes forgotten that every international institution is made up of people – lawyers, judges, assistants, policy makers. The European Court of Human Rights (ECtHR) is not an exception; it is built up of professional lawyers who go through extremely competitive selection procedures. The Court is careful in selecting its staff. The Court elected its new president (Dean Spielmann, Luxembourg) just three days ago. Judge Spielmann is one of the prominent members of the ECtHR bench. However, not all staff-related policies are decided as rationally and beneficially for human rights protection as this election of the President.

Even despite well-trained staff, the Court it is strangled with hundreds and hundreds of applications and the Court is looking for an adequate response to this crisis. There are numerous reasons why the Court is suffering from repetitive applications: poorly organised legal systems, lack of implementation of the judgments, lack of resources and political will on the part of the Contracting parties. These are the factors which the Court can only influence in a very limited fashion. However, there is something the Court could do.

The Court and the Council of Europe could change their policy in the area of human resources. I would argue that a more careful and selective approach to the termination of contracts of lawyers working for the ECtHR would likely improve the Court's capacity to deal with its cases. What would a normal employer do if an employee is experienced enough and does his/her work well? The answer is pretty straightforward – the employer would most likely at least keep or even promote the employee. What does the ECtHR do in this situation – the Court terminates employees' contracts. It is counterproductive, counterintuitive and in no way helps the ECtHR to reduce its backlog. Now I will explain this phenomenon in greater detail.

The majority of the lawyers of the ECtHR are employed on the basis of 4-year contracts which are not renewable. It is a blanket rule which provides no exceptions and merit plays no role. This rule is relevant to the so called B-lawyers who normally are deal with applications that just reached the ECtHR (there are currently approximately 151,600 pending applications). These lawyers make preliminary decisions about the future of these complaints. The role of B-lawyers is not decisive, but extremely important. They are at the forefront of the Court dealing with its backlog. Thus, the fact that every four years the Court has to train new inexperienced lawyers does not help the Court to tackle its backlog. At the same time well-trained, experienced lawyers who worked at the Court for four years are thrown off the Court. "New lawyers" are normally less experienced and deal with every case less promptly and

One of the Keys to the ECtHR Problems

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efficiently than experienced lawyers.

The rationale behind this seemingly absurd human resources policy can be found in a broader social role of the ECtHR. These experienced lawyers leaving the Court after 4 years of service are seen as missionaries or ambassadors who are supposed to bring the values of the ECHR to the member states. However, it seems that it does not always work this way. Frequently, former lawyers of the ECtHR work in other international organisations without any considerable impact on their home countries; some of them remain in Strasbourg, studying at the University of Strasbourg. Of course, the Court should attempt to improve human rights in the Member States not only through their judgments but through training of well qualified personnel. However, even those the B-lawyers who come back to the Member States are unlikely to create a critical mass of "new lawyers" that can support structural changes in the Member States due to an overall insignificant number of them. At the same time, the damage of this policy caused to the Court is disproportionate to some hypothetical assistance in protection of human rights the leaving lawyers can provide to the states. It seems that the Council of Europe and the ECtHR should revisit its human resources policy in this area.

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