EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Opinion of the Court on Draft Protocol No. 15 to the European Convention on Human Rights

Adopted on 6 February 2013

Introductory remark

1. The Court issues this Opinion at the request of the Committee of Ministers of 17 January 2013.

2. Draft Protocol No. 15 was prepared in order to implement the decisions reached at the Brighton Conference to make five amendments to the European Convention on Human Rights. Three of these were suggested by the Court, in its Preliminary Opinion for the preparation of the conference, namely the repeal of the compulsory retirement age (Article 23 § 2), the removal of the parties' veto over the relinquishment of a case to the Grand Chamber (Article 30), and the reduction of the time-limit for making an application from six months to four months (Article 35 § 1). These three matters are therefore only very briefly commented on below.

Remarks on the text

The Preamble

3. This part of the Protocol gives rise to two remarks. First, the reference in the second paragraph to the Brighton declaration makes clear the context within which the draft Protocol was negotiated. Second, the Court welcomes the wording of the fourth paragraph which, as did a very similar paragraph in the preamble to Protocol No. 14, affirms the pre-eminent role of the Court in protecting human rights in Europe. It is a statement very much in keeping with the declarations of all three high-level reform conferences, those of Interlaken, Izmir and Brighton.

Article 1

4. This provision contains a new paragraph intended to become the final recital in the Preamble to the Convention. This same wording was the subject of a comment that the Court sent to the CDDH in November 2012, in which it expressed reservations at the proposal. The Court's principal concern was that the phrasing used, which it found to be incomplete, could give rise to uncertainty as to its intended meaning. While the text has not been revised, the drafters' intentions have been clarified. The explanatory report now states that "[i]t is intended…to be consistent with the doctrine of the margin of appreciation as developed by the Court in its case law". That stated intention coincides with the suggestion that the Court made at the end of its comment to develop the text further. The intended meaning can therefore be said to be in line with the relevant terms of the Brighton Declaration (in particular paragraph 12b, read along with paragraphs 10, 11 and 12a). As the Court indicated in its comment to the CDDH, there clearly was no common intention of the High Contracting Parties to alter either the substance of the Convention or its system of international, collective enforcement. Although the Court's preference is still for a more developed text, it is aware that the current wording represents a compromise among States in order to reach agreement over the Protocol as a whole. In any event, both the explanation given and the context in which the text was drafted are themselves legally significant, as illustrated by the Court's references to the Explanatory Report to Protocol No. 14 and to the Interlaken Action Plan in *Korolev v. Russia* (dec.), no. 25551/05, ECHR 2010. Moreover, the report of the relevant meeting of the CDDH – an extract of which the Committee of Ministers appended to its request for the present opinion – forms part of the *travaux préparatoires* of the Protocol and thus is relevant to its interpretation.

5. The other principle that is referred to in the proposed new paragraph is subsidiarity. This having been a fundamental theme of the reform of the process, the insertion of a reference to it in the Convention is to be welcomed. The wording used in this respect, and in the explanatory report, reflects the Court's pronouncements on the principle.

Article 2

6. The Court welcomes this change, which should be beneficial in future by fostering the election of very highly experienced candidates as judges, whose services may be retained beyond an age limit that no longer seems imperative in the present day.

Article 3

7. This change, which was proposed by the Court as a means of enhancing case-law consistency, is also welcomed. The explanatory report identifies an additional reason for this amendment, namely expediting the examination of important cases by removing one procedural step.

8. The first point the Court would make is that, as indicated in its preliminary opinion for the Brighton Conference, it has modified Rule 72 of the Rules of Court concerning relinquishment of jurisdiction.

9. The explanatory report then raises three points, in paragraphs 18 and 19, regarding the Court's practice once this amendment takes effect. The first is that before deciding to relinquish a case, the Chamber consult the parties. This can be accommodated.

10. The second point is that the Chamber narrow down the case in question by rejecting any inadmissible complaints at that stage. The Court's practice at present, at both Chamber and Grand Chamber level, is to consider issues of admissibility and merits simultaneously, as envisaged by Article 29 § 1 of the Convention. It is of course open to a Chamber to dispose of part of an application by means of an admissibility decision and then to relinquish jurisdiction in favour of the Grand Chamber - see as a recent example *Catan and Others v. the Republic of Moldova and Russia.*[1] It is relevant to point out here that, subsequent to the drafting of the explanatory report, the Court has amended Rule 27A of the Rules of Court. It is now possible for Presidents of Section, when communicating a case to the Government, to simultaneously strike out any manifestly ill-founded or plainly inadmissible complaints from a file. This will be in the interests of a more focussed procedure before the Chamber and, in case of relinquishment, before the Grand Chamber.

11. The third point is that the Court give more specific indications to the parties regarding the possible change in case-law that might occur, or the serious question of interpretation that has prompted relinquishment. It is in the interests of the procedure that it be clear to the parties what issues they should address in depth before the Grand Chamber. In most cases, these issues should be clear enough. Where a party has a doubt, it may raise the matter with the Court's Registry, which can provide assistance.

Article 4

12. Regarding the reduction of the time-limit, the Court has no remark. It notes the transitional rules that accompany this amendment, which provide a valuable measure of legal certainty to applicants. It will ensure that the public is notified in a clear and timely way of the entry into force of this amendment, and looks to Governments, national human rights institutions, the legal profession and civil society to assist it in this.

Article 5

13. Concerning this final amendment, the Court sees no difficulty.

[1] Applications nos. 43370/04, 8252/05 and 18454/06. By a decision of 15 June 2010 the Chamber found part of the application inadmissible. It subsequently relinquished jurisdiction in favour of the Grand Chamber, which gave judgment on 19 October 2012. See also *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, 17 September 2009.