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THE ROLE OF THE 15 PROTOCOL TO THE EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

The Convention for the Protection of Human Rights and Fundamental

Freedoms, better known as the «European Convention on Human Rights» is a creation of the Council of Europe. It was opened for signature in Rome on November 4, 1950, and entered into force on September 3, 1953. The governments signatory hereto being members of the Council of Europe, considering the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on the 10th December 1948; considering that this declaration aims at securing the universal and effective recognition and observance of the Rights therein declared [1, p.95].

This year the European Court Of Human Rights is celebrating 54th birthday and during the whole period of its existing a huge work has been done. The new 15 protocol was opened for signature on 24 June 2013 and proposed certain changes. It will not enter into force until three months after it has been signed and ratified by all forty seven member states.In the first week it was open for signature, it was signed by twenty member states of the Council of Europe. This article analyzes advantages and disadvantages of the 15 protocol.

The changes are considered in more details below:

1st Amendment in Preamble of the Convention

Since 1958 the European Commission on Human Rights and later the Court have recognized that state parties to the Convention should be allowed a certain amount of discretion when implementing certain of their obligations under the Convention within their own jurisdictions. The purpose of this doctrine known as the «margin of appreciation»,is to recognize the diverse cultural and legal traditions of the various state parties to the Convention. It is a concept which is intrinsically linked with that of subsidiarity of the Convention system which acknowledges that domestic authorities have primary responsibility for guaranteeing and protecting human rights at a national level.

Article 1 of the newly drafted Protocol 15, for the first time, inserts these well-established principles into the text of the Convention at the end of the preamble with the following text:

«Affirming that the High Contracting Parties in accordance with the principle of subsidiarity, have the primary responsibility to secure the rights and freedoms defined in this Convention and the Protocols thereto and that in doing so they enjoy a margin of appreciation, subject to the supervisory jurisdiction of the European Court of Human Rights established by this Convention».

It incorporates principles of judicial interpretation into the text of the Convention which are more appropriately accurately and flexibly expressed within the Court's jurisprudence. For example, the doctrine of margin of appreciation does not apply at all in respect of some rights or aspects of rights protected under the Convention, such as the right to freedom from torture and other ill-treatment [2].

2. Changes to the upper age limits for judges (changes in the Articles 21 and 23 of the Convention)

In Article 21 of the Convention, a new paragraph 2 shall be inserted, which shall be read as follows:

«Candidates shall be less than 65 years of age at the date by which the list of three candidates has been requested by the Parliamentary Assembly, further to Article 22»

Judicial candidates for the Court are elected from a list of three candidates nominated by member states. Changes made by Protocol 15 to the Article 21 of the Convention require that candidates put forward for selection must be less than 65 years of age at the date by which the list of three candidates is requested by PACE.

The second change to the office term for a Strasbourg judge removes the requirement that the judges' term of office expires when they reach the age of 70 by deleting paragraph 2 of the current Article 23 of the Convention.

Both these changes are aimed to enable elected judges to serve a full nine-year term of office, thereby reinforcing the consistency of the membership of the Court. It has been argued that the 70

year age limit applied under paragraph 2 of the current Article 23 of the Convention limits certain experienced judges from completing their term office and in light of the fact that judge's terms of office is no longer renewable, it was no longer considered essential to impose an age limit.

However, this change will not be enforced retrospectively, and the current maximum age for judges will remain in force for those judges whose names appear in those lists of candidates submitted before Protocol 15 enters into force.

3. Parties' consent no longer required for the relinquishment of jurisdiction by a Chamber to the Grand Chamber. (Change in Article 30) [3].

Article 30 of the Convention provides that where certain criteria are met, a Chamber may relinquish jurisdiction of any case which is before it to the grand Chamber. These criteria are that either the case raises a serious question affecting the interpretation of the Protocols or that resolution of a question before it might have a result inconsistent with a judgment previously delivered by the Court.

Protocol 15 removes the right of parties to object to this relinquishment by a Chamber and it aimed at accelerating proceedings before the Court in cases which raise serious questions affecting the interpretation of the Convention or a potential departure from existing case law. In such cases, it would be expected that the Chamber would consult the parties on its intentions, and it would be preferable for the Chamber to narrow down the case as far as possible, including by finding inadmissible any relevant parts of the case before relinquishing it.

4. Time limit for submitting applications (change in paragraph 1 of Article 35)

This amendment will result in a time limit of four rather than six months for lodging an application with the Court following the date of final domestic decision.

This amendment will not be enforced retrospectively and will also not apply to applications where the final decision within the meaning of Article 35, paragraph 1 of the Convention was taken prior to an amended rule entering in force. A curtailed time period for applying to the Court is likely to have a disproportionate impact upon applicants in jurisdictions where some of the most gross violations of human rights occur. For instance, some applicants may experience difficulties in finding adequate legal representation. Others may be disadvantaged due to the geographic remoteness, financial or technological limitations.

5. Admissibility criteria, significant disadvantage (Change in Article 35)

The current Article 35 (3)(b) provides that the Court shall declare inadmissible any individual application submitted under Article 34 if it considers that the applicant has not suffered a significant disadvantage unless respect for human rights as defined in the Convention and in the protocols thereto requires an examination of an application on the merits and provided that no case may be rejected on such grounds which has not been duly considered by a domestic tribunal.

Protocol 15 removes the second limb of the Article 35 test set out above, namely «provided that no case may be rejected on such grounds which has not been duly considered by a domestic tribunal». In practical terms this means that the application of the criteria of lack of «significant disadvantage» will be limited only by the first requirement of «the respect of human rights»

LITERATURE

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