Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Opinion 116 (1983)[1]

Draft Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms extending the list of political and civil rights set forth in the convention

Parliamentary Assembly

The Assembly,

1. Gratified that the Committee of Ministers should have called for its opinion on the draft Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms extending the list of civil and political rights set forth in the convention ;

2. Recalling its efforts and proposals intended to secure, through an extension of the rights set forth in the European Convention on Human Rights, enhanced protection of the individual ;

3. Noting that the draft protocol is part of the evolution of the European convention, but regretting that, after such lengthy travaux préparatoires, the list of the new rights contained in the draft protocol is so limited ;

4. Trusting that this state of affairs will be offset by speedy ratification on the part of all parties to the European convention, and that the application of the right of individual appeal and recognition of the compulsory jurisdiction of the European Court of Human Rights will be extended to the protocol ;

5. Believing that the draft protocol is merely an extension of the list of civil and political rights set forth in the European Convention on Human Rights ;

6. Stressing the need for further efforts to update and extend civil and political, as well as social, economic and cultural rights, as guaranteed under the convention,

7.

7.1. Expresses a favourable opinion on the draft protocol, and proposes nevertheless :

a. to delete in paragraph 2 of Article 2 of the draft protocol the following part of the sentence : "was tried in the first instance by the highest tribunal or ..." ;

b. to replace paragraph 2 of Article 7 of the draft protocol by the following text : "A declaration already made or which may in the future be made, in accordance with Article 25 or Article 46 of the Convention, by any High Contracting Party to this Protocol shall become operative in respect of the provisions of this Protocol" ;

7.2. Considers, in connection with the two matters which were not settled when the protocol was being drafted (the à la carte system and the significance of the explanatory report) :

a. that it would be most prejudicial to the cohesiveness of the system of protection established by the European convention if a state were permitted to become a party to the protocol without accepting all the articles guaranteeing new rights (the so-called à la carte system) ;

b. that the Council of Europe practice, whereby the explanatory report does not constitute an authentic instrument for the interpretation of the treaty concerned, should be maintained ;

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1. Assembly debate on 28 September 1983 (13th Sitting) (see Doc. 5106, report of the Legal Affairs Committee) Text adopted by the Assembly on 28 September 1983 (13th Sitting).

7.3. Invites all the Contracting Parties to the European convention to sign and ratify the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms extending the list of civil and political rights set forth in the convention as soon as the text of the protocol has been adopted by the Committee of Ministers, and to extend to this protocol the application of the right of individual appeal and recognition of the compulsory jurisdiction of the European Court of Human Rights ;

8. Invites the Committee of Ministers to request the Assembly more frequently for opinions on draft conventions and protocols thereto prepared in the Council of Europe.