



Doc. 14232

19 January 2017

Modernising the European Convention on Human Rights

Reply to Written question¹: Written question No. 712 (Doc. 14129)
Committee of Ministers

1. The Committee of Ministers recalls that the European Convention on Human Rights (ECHR) forms the cornerstone of human rights protection in Europe. As interpreted and applied by the European Court of Human Rights, it has played a major role in safeguarding and promoting human rights and, accordingly, democratic security in Europe. The Committee of Ministers notes that the ECHR is a major asset of the European democratic architecture, any alteration of which must be considered with the greatest care.

2. The rights under the ECHR belong not only to citizens, but also to non-nationals present in member States. For example, Article 3 provides that “[n]o one shall be subjected to torture or to inhuman or degrading treatment or punishment”. It has been interpreted by the Court to prevent States from deporting or extraditing non-nationals where there is a substantial risk of their being subjected to torture or other serious ill-treatment in the receiving country. Similar protection is provided by other international treaties to which the member States of the Council of Europe have signed up, such as the United Nations Refugee Convention and Convention against Torture.

3. In addition, Article 8 of the ECHR provides, *inter alia*, that “[e]veryone has the right to respect for his private and family life ...”. An interference with a person’s private or family life, such as the expulsion of a settled migrant or a refusal to allow other family members to join him or her on the territory of a Contracting State, will not breach Article 8 if it is “in accordance with the law”, pursues one or more of the legitimate aims listed in paragraph 2 of the article and is proportionate. The nature and seriousness of any crime committed by the person concerned, together with the length of time he or she has spent living in the country and the difficulty involved in relocation or reunification elsewhere, are factors relevant to the assessment whether expulsion or refusal of family reunification is proportionate. The case law of the Court makes it clear that the States Parties enjoy a “margin of appreciation” in how they weigh up these factors, since national authorities are in principle better placed than an international court to evaluate local needs and conditions.

4. Ensuring the long-term effectiveness of the ECHR system is a key priority of the Committee of Ministers. It has recently taken steps to amend the ECHR, *inter alia*, through the adoption at its 123rd Session of Protocol No. 15 to the Convention. Among the amendments contained in the Protocol is the addition of a new recital at the end of the Preamble of the Convention containing a reference to the principle of subsidiarity and the doctrine of the margin of appreciation. It is intended to enhance the transparency and accessibility of these characteristics of the Convention system and to be consistent with the doctrine of the margin of appreciation as developed by the Court in its case law. The Protocol was opened for signature on 24 June 2013 and will come into force when all the Contracting States to the ECHR have ratified it.

1. Adopted at the 1275th meeting of the Ministers’ Deputies (18 January 2017).

