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Interpretation to be put on paragraph 3 of Article 15 of the Convention for the protection of Human Rights

Report

Bureau of the Assembly

Rapporteur: Mr Pierre-Henri TEITGEN, France



A. Draft Recommendation

The Assembly recommends to the Committee of Ministers to decide t h a t information conveyed to the Secretary-General of the Council of Europe in accordance with paragraph 3 of Article 15 of the Convention for the protection of Human Rights shall be communicated by him :

- a.* to Governments of signatory States ;
- b.* to the Chairman of the Committee of Ministers;
- c.* to the President of the Consultative Assembly.

B. Explanatory Memorandum by M. TEITGEN

1.

During its Sitting of 21st April 1956, the Consultative Assembly of the Council of Europe instructed its Bureau to report to it on the following question :

When a State signatory to the European Convention for the protection of Human Rights exercises the right of derogation for which provision is made by Article 15 of this Convention, and, in conformity with paragraph 3 of this article, " keep (s) t h e Secretary-General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor ", should the Secretary-General limit his action to placing the information on record, without communication to other signatory States unless they request him to do so expressly, or should he communicate the information without delay to

- a. States, signatories to the Treaty;
- b. to the Chairman of the Committee of Ministers;
- c. to the President of the Consultative Assembly?

Your Bureau has, in the first place, noted :

1. that, with regard to the case cited in t h e debate of 21st April 1956, Her Britannic Majesty's Government had acted in precise accord with the conditions laid down in paragraph 3 of Article 15 of the Convention; it should be recognised, in consequence, that t h a t Government is not involved in the present discussion;
2. that the course of action taken by the Secretary-General of the Council of Europe, in the case cited in the debate of 21st April, was not an expedient employed because of particular difficulties associated with the case in question but was in accordance with precedent: on a previous occasion, in the month of June 1954, the Secretary-General had not felt obliged to communicate to other Member Governments information supplied by Her Majesty's Government concerning possible derogations from the Convention for the protection of Human Rights in the Malay Federation, Singapore, Kenya and British Guiana.

Your Bureau has subsequently given close consideration to the question which has arisen.

Two arguments have been advanced in support of the thesis whereby the Secretariat should refrain from communicating to Member States information supplied to it in execution of paragraph 3 of Article 15 of the Convention for the protection of Human Rights.

1. The " information " required in the light of paragraph 3 of Article 15 is of an entirely different character to the " declarations " and " notifications " required under other articles of the same Convention (Examples : Articles 25, 30, 46, 63, 65, 66 and Article 4 of the Protocol).

The terms " declaration " and " notification " are of a nature to imply that the communication in question should be published, such publication to be made by the Secretariat even where this is not specifically stated in the text of the Convention (Article 63 of the Convention and the supplementary Protocol). Conversely, the term " information " is of a nature to exclude publication.

2. Moreover, the above distinction is rational. The parts of the Convention where the terms " declaration " or " notification " appear are concerned with communications from which follow changes in the territories affected by the Convention or in the competence of the organs established by it. Publication of such communications is therefore indispensable.

On the other hand, " information " required under Article 15 does not, it is argued, call for publication for this reason that " the effect of a Contracting Party availing itself of Article 15 cannot restrict the application of the Convention—whether as regards the extent of the rights and freedoms secured, or as regards its territorial extension—in any way which is not permitted by the application of one of the provisions of the Convention ".

This argument has not convinced your Bureau, which has observed that it is the rule in international law to interpret a clause of a treaty, which may have two meanings, in t h a t sense which gives it a positive implication rather than a sense in which it would be deemed negative and become meaningless ¹.

Now, to return to the case at issue, it may be asked why the authors of the Treaty should have required that States having recourse to the right of derogation for which provision is made in Article 15 should inform the Secretary-General " of the measures which (they have) taken and the reasons therefor " if they had not thereby intended to ensure publication. If the Secretary-General is to keep to himself all communications made to him, they will present no further interest, and paragraph 3 of Article 15 interpreted in this way is in practice bereft of meaning. This interpretation referred to above should therefore be discarded.

Furthermore, the actual text of Article 15, paragraph 3, prohibits the proposed interpretation. It states clearly in fact that a State availing itself of a right of derogation " shall also inform the Secretary-General of the Council of Europe when such measures have ceased to operate, and the provisions of the Convention are again being fully executed ". Can it be maintained that because, on this occasion, a case of " information " is involved and not a " declaration " or " notification " t h a t the Secretary-General should not publish the communication made t o him and, in consequence, not inform contracting parties t h a t the Treaty is again fully in force? This is tantamount to an absurdity, but can it then also be maintained t h a t the t e r m " information " has a different meaning in the first and the second sentence of the same paragraph 3 of Article 15?

Your Bureau is equally of the opinion t h a t the second argument put forward in favour of non-communication is invalid.

Article 15 accords the title " right of derogation" to the right which the Article makes available to signatory States. There is a degree of pretence in affirming that States which have recourse to Article 15 are only applying the Treaty and are not making changes to the territories affected or the competence of the organs established thereby. In fact, these States do not infringe the Treaty, because they avail themselves of possible action for which it provides—but they do " derogate " from it in suspending temporarily its application within a prescribed area and, in so doing, they do make changes to the territories affected and the competence of the organs established by the Treaty. It follows therefore that the argument will not hold which excludes the publication of " information " in conformity with Article 15, on grounds that publicity should be restricted to communications affecting the application of the Convention with regard to its territorial extension or in matters bearing on the competence of its institutions.

Your Bureau is also of the opinion.

1. that Article 66 of the Convention, which obliges the Secretary-General of the Council of Europe to notify all Members of the Council of the entry into force of the Convention, the names of all Contracting Parties who have ratified it and the deposit of any instrument of ratification made subsequently, implies logically that an obligation exists to impart to the same Member States information concerning the right of derogation in the light of Article 15;
2. that it is necessary to interpret paragraph 3 of Article 15 in t h e spirit of the Statute of the Council of Europe as well as of the Convention for the Protection of Human Rights and in a manner to ensure the maintenance of security, good faith and mutual confidence within the community of Member States : it follows therefore that " information " in connection with paragraph 3 of Article 15 should be published together with all other " declarations " or " notifications " required under the Treaty.

Your Bureau has also taken note of the fact that the Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4th November 1950, is not merely a multilateral Convention on classical lines.

It is also a convention of the Council of Europe. It was drafted by the Consultative Assembly in collaboration with the Committee of Ministers.

The States who signed it did so as Members of the Council of Europe. This is expressly stated in the Preamble.

It is open to signature only by Members of the Council of Europe (Article 66).

Ratifications are to be deposited with the Secretary-General together with, as has been seen, all notifications for which the Treaty makes provision (Article 66 and other articles above cited).

1. Costa-Rica—United States : Joint Commission, Washington, 31st December 1862, case of Isaac Harrington; United States—Haiti, 4th December 1888, case of van Bokkelen; Opinion of the International Court of Justice of 16th May 1925, Polish Postal Services in Danzig, etc.

Any country which ceases to be a Member of the Council of Europe would also cease to be a party to the Convention (Article 65).

It is the Council of Europe (Committee of Ministers or Assembly as the case may be) which elects the members of the European Commission on Human Rights and the members of the Court (Articles 21 and 38).

The Secretariat of the European Commission is provided by the Secretariat-General of the Council of Europe (Article 37).

Cases are brought before the Commission by means of requests addressed to the Secretary-General of the Council of Europe (Articles 24 and 25).

The Committee of Ministers is responsible for giving effect to the proposals of the Commission. It supervises the execution of judgements of the Court (Articles 32 and 54).

According to Article 57, every Contracting Party shall, on receipt of a request from the Secretary-General of the Council of Europe, furnish an explanation of the manner in which its internal law ensures the effective implementation of any of the provisions of the Convention.

The expenses of the Commission and the Court shall be borne by the Council of Europe (Article 58).

It is therefore very clear that the Council of Europe (Committee of Ministers, Consultative Assembly and Secretariat) is responsible for controlling and guaranteeing the effective application of the Convention. It is, after all, this guarantee of the Council of Europe which constitutes the strength of the Convention, as was continually pointed out in preparatory debates.

But it is also incontestable that, in order to ensure that this guarantee is carried out by all the organs of the Council of Europe, each acting within its own sphere of responsibility, contact between these organs must take place " with a view to establishing the day-to-day functions of the community on a basis of constant consultation and of establishing between all interested parties a common point of view and common knowledge " (see paragraph I of the Convention specified in Article 85 of the Treaty establishing E. C. S. C).

Your Bureau therefore proposes the adoption of the above recommendation.