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Draft Protocol No. 11 to the European Convention on Human Rights introducing a single court

Parliamentary Assembly

1. At the Council of Europe Summit (Vienna, 8-9 October 1993) the heads of state and government decided to establish, as an integral part of the Convention, a single European Court of Human Rights to supersede the present controlling bodies. They then gave the Committee of Ministers of the Council of Europe a mandate to finalise a draft protocol amending the Convention for the Protection of Human Rights and Fundamental Freedoms, with a view to adopting a text and opening it for signature at its ministerial meeting in May 1994.

2. Immediately after the summit, the Committee of Ministers decided to officially consult the Parliamentary Assembly as well as the European Commission and Court of Human Rights on this draft protocol, with a view to seeking their opinion, and agreed to keep these three bodies regularly informed on the progress of the work of the experts.

3. At its 93rd Ministerial Session on 4 November 1993, the Committee of Ministers confirmed the above decisions.

4. The Assembly, for its part, whole-heartedly welcomes these decisions which correspond to its often reiterated wish to be consulted on draft legal instruments of the Council of Europe as well as its proposal, laid down in Recommendation 1194 (1992), to create a single court in place of the existing Commission and Court.

5. The main characteristics of the proposed draft Protocol No. 11 to the European Convention on Human Rights introducing a single court system are the following:

5.1. establishment of a single court to supersede the existing European Commission and Court of Human Rights;

5.2. election of the judges (one in respect of each Contracting Party _ as against one for each member state at present) for a period of six years (nine years at present) by the Assembly from three candidates proposed by the Contracting Party concerned;

5.3. in essence, the proceedings and procedural guarantees under the Convention are to be preserved while being adapted to the single court system;

5.4. for consideration of the cases brought before it, the Court shall sit in committees of three (for decisions of admissibility), chambers of seven and a grand chamber of seventeen judges;

5.5. all inter-state applications shall be dealt with by the Grand Chamber;

5.6. the right to submit individual applications (until now an optional clause of the Convention) will be made automatic;

1. Assembly debate on 25 January 1994 (2nd Sitting) (see Doc. 6983, report of the Committee on Legal Affairs and Human Rights, Rapporteur: Mr Vogel) Text adopted by the Assembly on 25 January 1994 (2nd Sitting).

5.7. the Committee of Ministers will lose its role as a decision-taking body with regard to both individual and state applications (Article 32 of the existing text) but will continue to supervise the execution of the final judgments of the Court.

6. In conclusion, the Assembly fully supports draft Protocol No. 11 subject to the proposals made in paragraph 7. It expects this protocol to be finalised and opened for signature and ratification, as planned, in May 1994. It hopes that the protocol will be ratified by all Contracting States before the end of 1995 in order to enter into force in the course of 1996.

7. Although the Assembly, on the whole, agrees with the text of the draft protocol, it wishes to make the following proposals and recommendations to the Committee of Ministers with a view to strengthening and improving the text:

7.1. the new Court should be permanent and full-time;

7.2. as individual applicants do not need to be assisted by legal counsel the text of the draft protocol should be easily understandable by lay persons. An effort should be made to make the text as easily accessible as possible - provided this does not lead to any delay. For that reason a more logical order of the proposed provisions, the introduction of small headings above the articles, and a rewording (not a change of substance) of certain provisions is desirable;

7.3. the new Court should start with a clean sheet and not have to consider cases which have been dealt with half way. The existing Commission and Court should be allowed to finish all cases pending before them. This is also in accordance with Article 40, paragraph 6 of the Convention as it now stands and which reads: "The members of the Court shall hold office until replaced. After having been replaced, they shall continue to deal with such cases as they already have under consideration". The existing Court might be given eighteen months and the Commission two and a half years (instead of eighteen months) to do this. Article 5 of the draft protocol should therefore be amended to this effect;

7.4. the term of office of the judges should be maintained as it is under the present system (nine years) but without the possibility of re-election. The Assembly agrees however that the Court shall consist of a number of judges "equal to that of the High Contracting Parties" (Article 20 of the draft protocol) and no longer be "equal to that of the members of the Council of Europe" (Article 38 of the Convention) especially as it is now accepted that new member states should ratify the Convention within a year or so of having adhered to the Organisation;

7.5. provision should be made for all decisions of the Court, including the decisions on admissibility (Article 29 of the draft protocol) to be adequately justified;

7.6. the Assembly supports the idea that a chamber of the Court should be able to relinquish jurisdiction in favour of the Grand Chamber. Yet this should be a matter for the Court alone and the words "unless one of the parties to the case objects" at the end of Article 31 of the draft protocol should be deleted;

7.7. whenever possible, sessions of the chambers of the Court (including its Grand Chamber) are to be held in public;

7.8. the protocol should provide the framework for the new single Court. There is no need for an elaboration in detail and it must be kept in mind that changing the provisions of the protocol - once adopted and ratified - will need new negotiations, the drawing-up of another protocol and subsequent signature and ratification by all Contracting States. For these reasons provisions pertaining to the internal functions and organisation of the Court should rather be laid down in the Rules of Procedure of the Court;

7.9. it follows from this that it may be left open how the "referendars" who assist the judges are to be appointed. The words "chosen by them" in Article 25 should therefore be deleted;

7.10. it may not be necessary or desirable in all cases to separate the consideration of the question of admissibility from the consideration of merit. The word "shall" in the second sentence of Article 30 should therefore by replaced be "may".

7.11.

8. The Assembly expresses the wish that these proposals be considered as a positive contribution to this decisive initiative and hopes to be closely associated with the final stages of the elaboration of the protocol.