Protocol No. 15 amending the Convention for the Protection of Human Rights and Fundamental Freedoms has entered into force – beware: the time for filing an application has been shortened from 6 to 4 months

Today (1 August 2021) the Protocol No. 15 amending the Convention for the Protection of Human Rights and Fundamental Freedoms has entered into force. This Protocol will apply in all 47 States Parties. Although it was open for signature/ratification since 2013, the ratification of Italy only occurred until 21 April 2021.

In the past, we have highlighted in this blog the increasing interaction between human rights and private international law and the need to interpret them harmoniously (see for example our previous posts here (HCCH Child Abduction Convention) and here (transnational surrogacy)).

Protocol No. 15 has introduced important amendments to the text of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). In particular, it has included the principle of subsidiarity and the doctrine of the margin of appreciation in the preamble, which have long and consistently been adopted by the case law of the European Court of Human Rights (ECtHR), and thus this is a welcome amendment.

It will now read as follows (art. 1 of the Protocol):

> *"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".

Of great important is the shortening of the time for the filing of an application in accordance with article 35 of the ECHR: from 6 to 4 months. This amendment will enter into force 6 months later (I assume on 1 February 2022). Articles 4 and 8(3) of the Protocol state the following:

Article 4

"In Article 35, paragraph 1 of the Convention, the words "within a period of six months" shall be replaced by the words "within a period of four months".

Article 8(3)

"Article 4 of this Protocol shall enter into force following the expiration of a period of six months after the date of entry into force of this Protocol. Article 4 of this Protocol shall not apply to applications in respect of which the final decision within the meaning of Article 35, paragraph 1 of the Convention was taken prior to the date of entry into force of Article 4 of this Protocol" (our emphasis).

This is perhaps a reaction to the increasing workload of the Court, which seems to be of serious concern to the States Parties. In particular, the Brighton declaration has noted that "the number of applications made each year to the Court has doubled since 2004. Very large numbers of applications are now pending before all of the Court's primary judicial formations. Many applicants, including those with a potentially well-founded application, have to wait for years for a response." Undoubtedly, this may compromise the effectiveness and reliability of the ECtHR. Nevertheless, this reduction of the filing time may also leave out cases that are well founded but during which the parties were late in realising that such recourse / legal challenge was available.

Lastly, I would like to highlight the removal of the right of the parties to object to the relinquishment of jurisdiction to the Grand Chamber in certain circumstances, such as when a case pending before a Chamber raises a serious question affecting the interpretation of the ECHR or its protocols (art. 3 of the Protocol and art. 30 ECHR). In my view, this is an improvement and avoids delays as it allows the

Chamber to make that call. It also provides consistency to the case law of the ECtHR. As to its entry into force, article 8(2) of the Protocol sets out the following:

> *"The amendment introduced by Article 3 of this Protocol shall not apply to any pending case in which one of the parties has objected, prior to the date of entry into force of this Protocol, to a proposal by a Chamber of the Court to relinquish jurisdiction in favour of the Grand Chamber"*