

## [EUROPEAN LAW] IMPLEMENTATION OF PROTOCOL N ° 15 AMENDING THE CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

**Implementation :1 August 2021.** On April 21, 2021, Italy deposited with the Council of Europe the instruments of ratification of Protocol No. 15 amending the European Convention on Human Rights and Fundamental Freedoms (hereinafter ECHR), becoming the last country to ratify it, almost eight years after the opening for signature of this treaty by the High Contracting Parties. The Principality ratified Protocol No. 15 on November 13, 2013, more than six years after the entry into force of the ECHR .

In accordance with Article 7, Protocol No. 15 shall enter into force on the first day of the month following the expiration of a period of three months after the date of ratification by all High Contracting Parties, i.e. August 1, 2021.

*What changes have been made ?*

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*Principle of subsidiarity and (national) margin of appreciation -  
Preamble of the ECHR*

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A new reference has been added to the Preamble of the ECHR to "formalize" the principle of subsidiarity and the doctrine of margin of appreciation.

**Principle of subsidiarity.** The procedure before the European Court is subsidiary: it is necessary to exhaust domestic remedies before the national judges before filing an appeal within the framework of the Council of Europe. The principle of subsidiarity implies that it is primarily up to the States to ensure the protection of rights by national legislation in the most appropriate way. The ECHR only sets standards but does not impose a strict harmonization of guarantees, which may vary according to local circumstances.

**The (national) margin of appreciation.** The principle of subsidiarity leaves the States a certain margin of autonomy in matters of political action, called "national margin of appreciation". In particular, the Court recognizes the particularities of the guarantee of fundamental rights, due to the cultural, moral, religious, historical, political (etc..) context of each State. The regulations in this area may vary from one country to another according to national traditions and the requirements imposed by the protection of the rights and freedoms of others and the maintenance of public order.

This margin of appreciation may be extended when the State invokes public policy requirements. This reservation is provided for in most of the articles of the ECHR: right to respect for private and family life (article 8), freedom of thought, conscience and religion (article 9), freedom of expression (article 10) or freedom of assembly and association (article 11).

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### *Relinquishment of jurisdiction to the Grand Chamber*

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**Removing of the right of the parties to object.** Until now, the parties had the possibility of objecting to the relinquishment of a case by a Chamber in favour of the Grand Chamber, in accordance with article 30 of the ECHR. This procedural option is now removed.

There are two reasons for this removal :

- The aim to strengthen the role played by the Grand Chamber in ensuring the consistency in the case law of the Court;
- The aim to speed up proceedings before the Court in cases which raise a serious question of interpretation of the Convention or the Protocols thereto or that may potentially lead to a departure from existing case law.

**Transitional provision.** In the interests of legal certainty and procedural predictability, the removal of the right of the parties to object to the relinquishment of jurisdiction will not apply to pending cases in which one of the parties has already objected, prior to the entry into force of Protocol No. 15, to a proposal to relinquish jurisdiction from a Chamber to the Grand Chamber..

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### *Admissibility requirements - Time limit for submitting applications (Article 35 § 1 ECHR) and significant harm (Article 35 § 3, b ECHR)*

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**Time limit for applications.** The application must be submitted within four months, not six, from the last final domestic decision of the highest administrative or judicial court.

This provision will not apply until six months after August 1, i.e. February 1, 2022, to allow potential applicants to become fully aware of the new deadline.

**Significant disadvantage.** Since the entry into force of Protocol No. 14, applications may be declared inadmissible on the grounds that "the applicant has not suffered any significant disadvantage (...)" (Article 35 §3, b ECHR). This admissibility criterion reflects the *de minimis non curat praetor* principle in the ECHR.

Its scope was previously limited by two safeguard clauses. Despite the absence of a significant prejudice, the application was admissible :

- If "respect for the human rights guaranteed by the Convention and its protocols requires an examination of the application on the merits ;
- (Or) if "the case has not been duly examined by a domestic court" (article 35 §3, b ECHR).

Protocole n° 15 removes this second safeguard clause.

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*Age limit for judges (articles 21 and 23 of the ECHR)*

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**Continuity of service.** Previously, the ECHR provided that the term of office of judges ended at the age of 70 (Article 23 § 2 ECHR). Protocol No. 15 abolishes this age limit, but provides in return that candidates for the office of judge must be under 65 years old. Once elected, they can exercise their function until the end of the (non-renewable) 9-year mandate, thus even beyond the age of 70. This solution is preferable to the current one in that it ensures greater continuity within the European Court of Human Rights. Indeed, there will be no more judges who will have to leave their function before the end of the 9-year term because they have reached the age limit of 70.

***Our team at Zabaldano Lawyers remains at your disposal to answer all your questions***