CDDH(2025)R102 Addendum 2
26 June 2025

STEERING COMMITTEE FOR HUMAN RIGHTS (CDDH)

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CDDH REPORT ON THE FIRST EFFECTS OF PROTOCOL NO. 15 TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS

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I – Introduction

1. The adoption of the Brighton Declaration at the High-Level Conference on the future of the European Court of Human Rights (19-20 April 2012) paved the way for the drafting and adoption of Protocol No. 15. The Committee of Ministers expressed its determination to implement the Declaration and instructed the CDDH to draft a protocol to the European Convention on Human Rights (the Convention).[1] The Protocol was adopted and opened for signature on 26 June 2013 and entered into force on 1 August 2021 upon its 46th ratification.

2. Protocol No. 15 added a new preambular recital to the Convention which referenced the principle of subsidiarity and the Court's doctrine of the margin of appreciation. It also introduced a new age-limit for candidates for the post of judge of the European Court of Human Rights ("the Court"). The other provisions of the Protocol concerned procedural changes, in particular the removal of the parties' right to object to the relinquishment of jurisdiction from chambers in favour of the Grand Chamber; the reduction of the time limit for lodging applications from six months to four months; and the amendment of the no-significant disadvantage admissibility criterion.

3. This report delivers on the CDDH's terms of reference to submit to the Committee of Ministers a report evaluating the first effects of Protocol No. 15 to the Convention by 31 December 2025. It has been prepared by DH-SYSC-PRO under the terms of reference given by the CDDH at its 99th meeting (28 November to 2 December 2023).

4. The effects of each provision of Protocol No. 15 are evaluated in turn below, based on its intended aims as these were stated in the Explanatory Report to the Protocol.

5. As regards the sources of information for preparing this report, the CDDH has relied primarily on data and information provided by the Court's Registry or made available on its website. The evaluation of the first effects of the new preambular recital, which codified principles which existed long before the entry into force of Protocol No. 15, called for data collection and analysis of thousands of judgments and decisions of the Court. Therefore, the CDDH relied on external expertise to collect the necessary data, which was provided by Mikael Rask Madsen, Professor of Law, iCourts, Centre of Excellence for International Courts, Faculty of Law, University of Copenhagen.[2] The CDDH has drawn its own analysis using the data provided in this context.

II – The principle of subsidiarity and the doctrine of margin of appreciation

6. Article 1 of Protocol No. 15 added the following recital to the preamble of the Convention: "[a]ffirming 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." The Explanatory Report to the Protocol (paragraph 7) stated that: "[this] 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."

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[1] CM(2012)PVadd1-Item2 Decisions adopted at the 122nd Session of the Committee of Ministers on 23/5/2012, Securing the long-term effectiveness of the supervisory mechanism of the ECHR.

[2] DH-SYSC-PRO(2024)08REV Report on the European Court of Human Rights' use of the principle of subsidiarity and margin of appreciation in relation to Protocol No. 15 to the European Convention on Human Rights – prepared by Professor Mikael Rask Madsen.

7. The meaning of the principle of subsidiarity and the margin of appreciation is given in a nutshell in the Explanatory Report to Protocol No. 15 (paragraphs 8, 9), which states that "[t]he States Parties to the Convention are obliged to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, and to provide an effective remedy before a national authority for everyone whose rights and freedoms are violated. The Court authoritatively interprets the Convention. It also acts as a safeguard for individuals whose rights and freedoms are not secured at the national level. The jurisprudence of the Court makes clear that the States Parties enjoy a margin of appreciation in how they apply and implement the Convention, depending on the circumstances of the case and the rights and freedoms engaged. This reflects that the Convention system is subsidiary to the safeguarding of human rights at national level and that national authorities are in principle better placed than an international court to evaluate local needs and conditions. The margin of appreciation goes hand in hand with supervision under the Convention system. In this respect, the role of the Court is to review whether decisions taken by national authorities are compatible with the Convention, having due regard to the State's margin of appreciation."

8. To evaluate the first effects of the principles of Article 1 of Protocol No. 15 in respect of its stated intention, the CDDH focused on the visibility of the principle and the doctrine in question in the case law of the Court over the last 24 years with a view to identifying any noticeable trends before and after the entry into force of Protocol No. 15. The starting point of this timeframe was defined to capture the period of the Court's membership renewal following the inauguration of the new Court and having in mind practical considerations about the feasibility of the research to be carried out.[3] This analysis gives a quantitative description of the visibility of the principle of subsidiarity and the margin of appreciation based on the number of references to these principles in the case law rather than an assessment of the Court's jurisprudence as regards its reliance on subsidiarity and deference to High Contracting Parties. This part of the report is completed by an overview of the application of the principle of subsidiarity and the doctrine of the margin of appreciation in the Court's case law (subsection b).

a. References to subsidiarity and the margin of appreciation in the case law

9. The CDDH based itself on research into the texts of 26 775 judgments available on HUDOC.[4] The texts of the parties' submissions in relation to these judgments are not part of the research. Around 3 776 of the judgments refer to the principle of subsidiarity and/ or the margin of appreciation explicitly.[5] An increasing trend in the frequency in such references can be observed in 2010 which peaked in 2014 and 2015. A decrease, especially, in referencing the margin of appreciation, is noticeable starting from 2020 and continuing in 2021, when Protocol No. 15 entered into force. Figure 1 below provides a graphical visualisation of the total number of judgments per year, the total number of references per year, the percentage of cases referring to subsidiarity out of the total number of cases for the relevant year (ratio), as well as the average ratio (median).[6]

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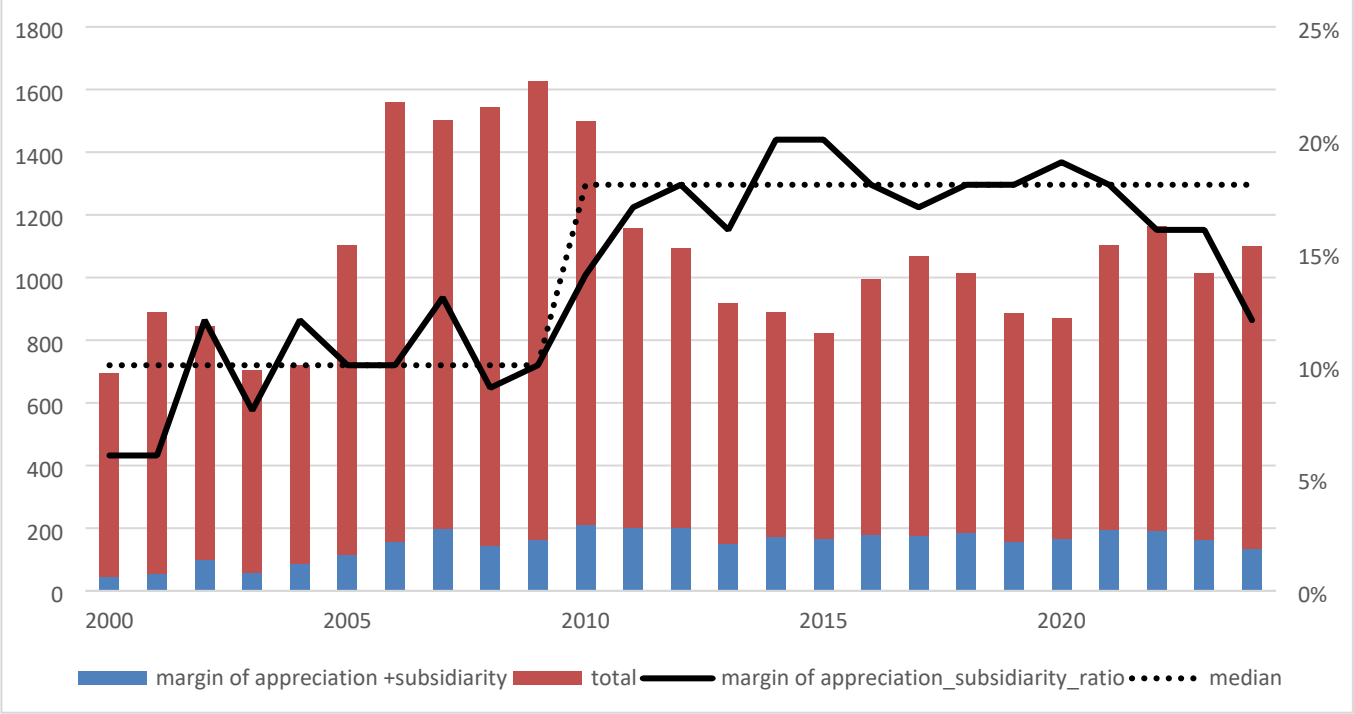
[3] The new Court was inaugurated on 3 November 1998 following the entry into force of Protocol No. 11 on 1 November 1998. One half of the judges elected in 1998 had their terms of office expire October 2001; the other half had their terms of office expire on 31 October 2004.

[4] These judgments cover the period from 1 January 2000 to 31 December 2024.

[5] DH-SYSC-PRO(2024)08REV. The dataset of 26 775 judgments, including dissenting and concurring opinions, comprises those which are available in only one of the official languages of the Court. Research employing AI tools focused on the use of terms: "margin of appreciation", "*marge nationale d'appréciation*", and "*marge d'appréciation*". In terms of the more structural dimensions of subsidiarity, we searched for the following terms: "subsidiarity", "subsidiary role", "*subsidiarité*", and "*rôle subsidiaire*". The Court's implicit use of the doctrine and the principle in question (for example, AMP v Romania dec. no. 79039/16, 16 January 2024; David Kibar v. Denmark, dec. no. 11093/22, 25 January 2024; Gulyas v. Hongrie, dec. no. 70863/17, 7 May 2024;) are, therefore, not included in this analysis.

[6] See also DH-SYSC-PRO(2024)08REV.

Figure 1. References to the "margin of appreciation", "subsidiarity" or "subsidiary role"



10. The entry into force of Protocol No. 15 has not resulted in an increased frequency of references to the principle of subsidiarity and/ or the doctrine of margin of appreciation. During the Interlaken process, from 2010 until 2020, these characteristics of the Convention system had a higher visibility in the case law.[7] This period is marked by the adoption of the Brighton Declaration at the High Level Conference on the future of the European Court of Human Rights (19-20 April 2012), which called for the introduction of these characteristics of the Convention system into the preamble of the Convention[8] and the opening for signature of Protocol No. 15 on 24 June 2013. By the end of 2020, all member States with one exception had ratified the Protocol. Arguably, the prospect of entry into force of Protocol No. 15 already influenced the visibility of the principle of subsidiarity and doctrine of margin of appreciation in the case law of the Court.[9] The decrease in the number of references to the principle of subsidiarity after the entry into force of Protocol No. 15 does not necessarily imply a reduction in its application, and may be explained, *inter alia*, by the fact that this principle became increasingly ingrained in the case law as a form of tacit knowledge which is less spelled out in judgments and decisions.[10]

11. Research into the subset of data comprising 3 776 judgments which refer to both subsidiarity and margin of appreciation shows that in the text of the judgments, the Court is the principal actor referring to these terms compared to the respondent governments and the applicants. The results are presented in figure 2 below, showing the percentages of each of the three actors of the total set of references to subsidiarity and margin of appreciation in the text of the judgments.

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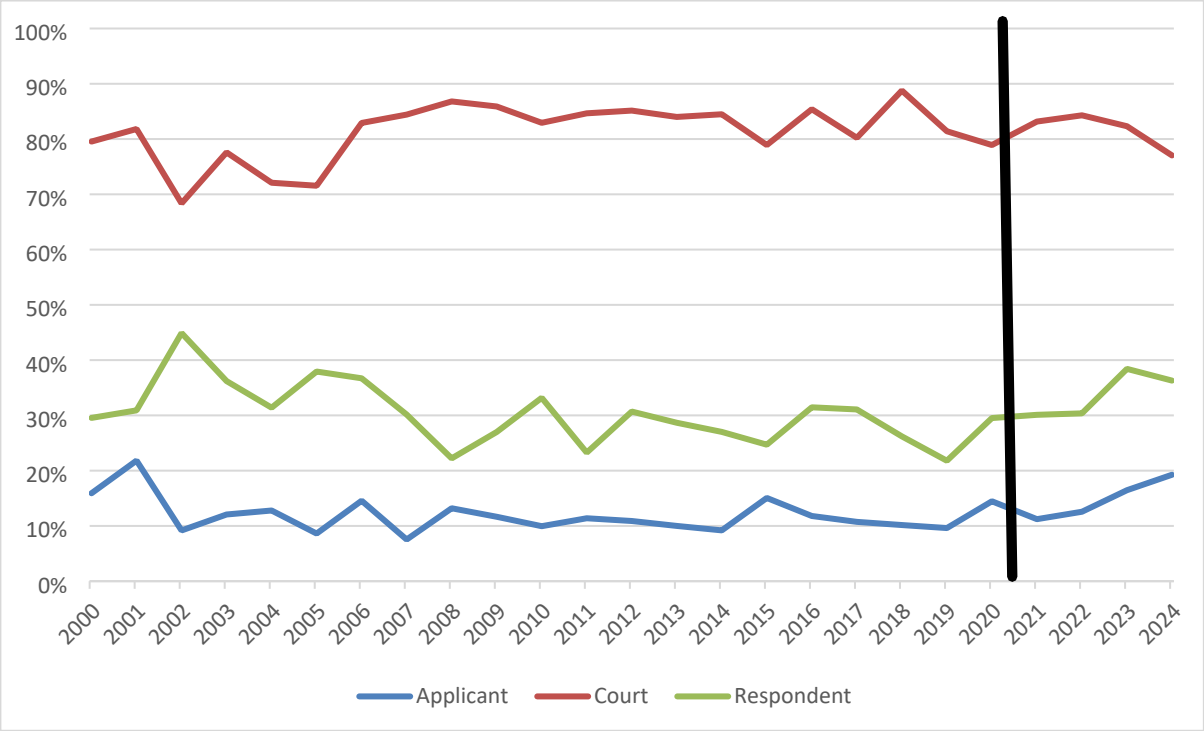
[7] Declaration of the High-Level Conference on the Future of the European Court of Human Rights (18-19 February 2010)

[8] Section B, 12, b.

[9] The Court has in one case found that the signature of the Brighton Declaration and the subsequent ratification of Protocol No. 15 by one State Party manifested an undertaking to observe its objectives pending its entry into force. Press Release ECHR 066 (2021), 18/02/2021, Grand Chamber to examine case concerning judicial reform in Poland.

[10] DH-SYSC-PRO(2024)08REV, p. 10.

Figure 2. References to subsidiarity and margin of appreciation by applicants, respondent governments and the Court



12. The new preambular recital introduced by Article 1 of Protocol No. 15 has itself been referred to in the Court's case law on a limited number of occasions. Since its entry into force, it has been referred to in approximately 23 judgments and 7 decisions.[11] In those judgments and decisions, the Court's summaries of the parties' submissions indicate that the applicants and respondent governments have rarely relied on this recital (one time each) while the Court has referred to the recital in most of these cases.[12]

13. When explicitly referring to the new preambular recital, the Court has occasionally noted that the principle of subsidiarity reflects a shared responsibility between States Parties and the Court, and that national authorities and courts must interpret and apply domestic law in a manner that gives full effect to the Convention.[13] The Court has also occasionally underlined the primary responsibility of the State Parties to secure the rights and freedoms of the Convention subject to the supervisory jurisdiction of the Court.[14] Where the Court has not explicitly referred to the new preambular recital introduced by Article 1 of Protocol No. 15, this does not mean that it has not applied the principle of subsidiarity.

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[11] Protocol No. 15 has been referred to in 38 judgments and 33 decisions.

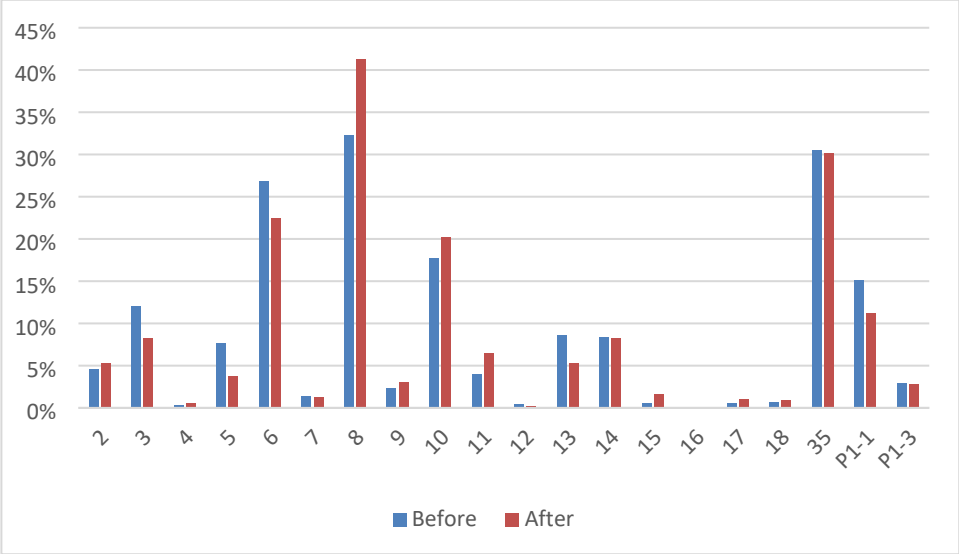
[12] DH-SYSC-PRO(2024)08REV, see appendices 1 and 2.

[13] Case of Grzeda v Poland, no. 43572/18, 15 March 2022, paragraph 324; Ștefan-Gabriel Mocanu and Others v. Romania, nos. 34323/21 and 8 others, 12 December 2023, paragraph 52; Verein Klimaseniorinnen Schweiz and others v. Switzerland, no. 53600/20, 9 April 2024, paragraph 411.

[14] Halet v. Luxembourg, no. 21884/18, 14 February 2023 paragraph159; K.K. and Others v. Denmark , no. 25212/21, 6 December 2022, paragraph 47.

14. The CDDH observes that the principle of subsidiarity and the margin of appreciation are referred to in judgments involving substantive provisions of the Convention, Articles 1 and 3 of Protocol No. 1, as well as Articles 15 to 18 and Article 35. A graphical presentation of the research setting out the broader trends referencing the principle of subsidiarity and the margin of appreciation is given in figure 3 below.[15] It can be observed that for both periods before and after the entry into force of Protocol No. 15, the main Convention provisions at stake in cases where references to subsidiarity are included are Articles 6, 8, 10, and 35.[16]

Figure 3 Subsidiarity cases in relation to specific Convention articles before and after the entry into force of Protocol No. 15



b. Application of subsidiarity and the margin of appreciation in the Court's caselaw

15. The margin of appreciation is subject to careful judicial calibration in the cases decided by the Court. It is evaluated against the legal and factual context of each case and part of a complex interplay with other legal principles of interpretation of the Convention established in the Court's case law. The CDDH highlights certain core elements considered by the Court as central to the operation of the principle of subsidiarity and the doctrine of margin of appreciation.

16. The Court's case law, both before and after the entry into force of Protocol No. 15, features what is commonly referred to by various actors as a process-based review.[17] In carrying out a process-based review, the Court considers the extent to which national authorities have engaged with its principles of interpretation and application of the Convention when reaching their decisions. The Court assesses whether national authorities, legislative or judicial, have weighed competing interests and considered compliance with the Convention in their decision-making processes.

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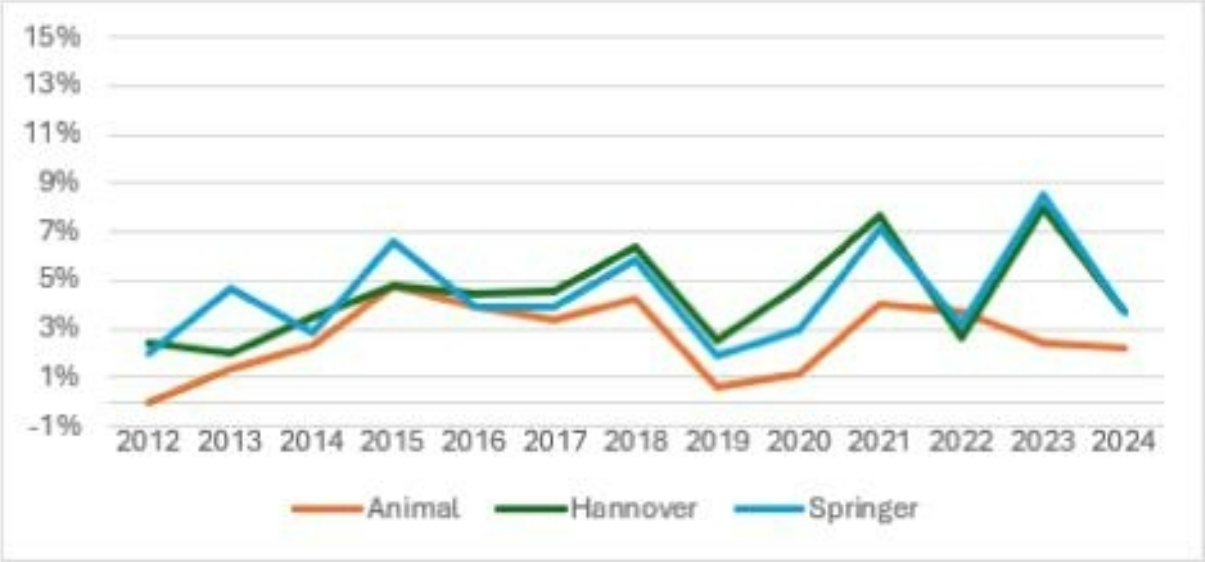
[15] DH-SYSC-PRO(2024)08REV. In this figure, judgments citing multiple Convention and Protocol articles are counted in connection with each of these articles. For example, if a case concerned articles 3, 5 and 8, and subsidiarity is referenced in relation to article 8, the case is counted for articles 3, 5 and 8.

[16] See also DH-SYSC-PRO(2024)08REV. Section 3, pp. 13-15. The research covers the period from February 2010 to December 2024.

[17] Revisiting subsidiarity in the age of shared responsibility, background document prepared by the Registry for a judicial seminar held in January 2024, pg.12, with references.

17. This conceptualisation of the Court's role as being subsidiary to that of the national system for safeguarding human rights can be illustrated by three key judgments delivered in 2012 and 2013, namely Axel Springer AG v. Germany,[18] Von Hannover v. Germany,[19] and Animal Defenders International v. UK.[20] In the first two of these cases, the Court affirmed that where the balancing exercise between the rights at stake has been undertaken by the national authorities in conformity with the criteria laid down in the Court's case-law, the Court would require strong reasons to substitute its view for that of the domestic courts.[21] In the third case, which concerned a general measure regulating political advertising, the Court underlined that the quality of the parliamentary and judicial review of the necessity of the impugned measure is of particular importance to the operation of the relevant margin of appreciation. It added that the central question is not, therefore, whether the State could have achieved the legitimate aim through different means, but rather whether, in adopting the general measure and striking a balance, the legislature acted within the margin of appreciation afforded to it.[22] All three of these judgments are among those most cited in the Court's case law as regards the principle of subsidiarity and the margin of appreciation, both before and after the entry into force of Protocol No. 15; this is shown in the figure below.

Figure 4 Judgments quoting the three key judgments (expressed as % of total no. of judgments invoking subsidiarity for the relevant year)



18. The core elements of the Court's supervision of interferences with Convention rights have not changed since the entry into force of Protocol No. 15. While there are numerous judgments illustrating this, the CDDH highlights by way of example the Court's summary of its subsidiarity review given in Halet v. Luxembourg.[23] The Court reiterated that it is primarily for the national authorities, notably the courts, to interpret and apply domestic law in a manner that gives full effect to the Convention. Its role is ultimately to determine whether the way in which that law is interpreted

[18] Axel Springer AG v. Germany [GC], no 39954/08, 7 February 2012.
[19] Von Hannover v. Germany (No. 2), no 40660/08, 7 February 2012.
[20] Animal Defenders International v. UK 48876/08), 22 April 2013.
[21] Axel Springer AG v. Germany [GC], no. 39954/08, 7 February 2012, paragraph 88; Von Hannover v. Germany (No. 2), no. 40660/08, 7 February 2012, paragraph 107.
[22] Animal Defenders International v. UK, no. 48876/08), 22 April 2013, paragraphs 108, 110.
[23] Halet v. Luxembourg, No. 21884/18, 14 February 2023.

and applied produces consequences that are consistent with the principles of the Convention.[24] In this connection, the Court emphasised that it has an increased expectation that the national courts will take account of its case-law in reaching their decisions where, on the questions at issue, that case law is both substantial and stable and where it has identified a series of objective principles and criteria that can be easily applied. The Court has found a violation of the Convention where it held, with regard to one or other of the Convention's provisions, that the domestic courts had not given sufficiently detailed reasons for their decisions or assessed the case before them in the light of the principles defined in its case-law.[25] Where, on the other hand, the domestic courts have carefully examined the facts, applied the relevant human rights standards consistently with the Convention and the Court's case-law, and adequately balanced the individual interests against the public interest in a case, the Court would require strong reasons to substitute its view for that of the domestic courts.[26]

19. Where there has not been such an examination, the Court has affirmed, notably in Article 8 cases, that it remained empowered to give the final ruling on whether an impugned measure is reconcilable with the Convention and that it would itself carry out the required balancing exercise.[27] It should be noted however, that in a case where the domestic authorities carried out an examination, which concerned a legal prohibition on the right to strike in the public sector, the Court has carried out its own assessment of the totality of measures taken by the respondent State with a view to ascertaining whether the effect that this measure had on the applicants was proportionate and whether it rendered their right to freedom of association devoid of substance.[28] In another case concerning climate change, while examining whether the respondent State had remained within its margin of appreciation, the Court examined whether the domestic authorities (legislative, executive or judicial) had taken a series of specific measures for the substantial and progressive reduction of the relevant State's greenhouse gas emission levels, with a view to reaching various objectives set by relevant international agreements.[29]

20. The Court's application of the principle of subsidiarity when assessing whether or not the requirement of exhaustion of domestic remedies under Article 35 of the Convention has been fulfilled has not substantially changed since the entry into force of Protocol No. 15. The Court generally considers that for those member States in which individuals may make direct constitutional complaints, applicants are required to make use of this remedy in order for their complaint to be admissible in Strasbourg.[30] The rule that the applicant is required to raise a Convention complaint before the national courts and the principle that the Court has the power to decide on the characterisation to be given in law to the facts of a complaint are part of the well-established case law of the Court predating the entry into force of Protocol No. 15.[31]

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[24] Paragraph 159.

[25] Paragraph 161.

[26] Paragraph 162.

[27] Ndidi v. the United Kingdom, No. 41215/14, 14 September 2017, paragraph 76; Otite v. the United Kingdom, No. 18339/19, 27 September 2022, paragraphs 39-46.

[28] Humpert and others v. Germany, nos. 59433/18, 59477/18, 59481/18 and 59494/18, 14 December 2023, paragraphs 119-144. The Court carried out this assessment despite the assessment of the Federal Constitutional Court of the measures and concluded that the prohibition provided by the domestic law "is a general measure reflecting the balancing and weighing-up of different, potentially competing, constitutional interests" and that the impact of the prohibition did not outweigh the justifications for the restrictions entailed by the general measure as presented by the respondent Government and reflected in the extensive assessment of the Federal Constitutional Court.

[29] Verein Klimaseniorinnen Schweiz and others v. Switzerland, No. 53600/20, 9 April 2024, paragraph 550.

[30] Parrillo v. Italy [GC], No. 46470/11, 27 August 2015, paragraph 87-105. Communauté genevoise d'action syndicale (CGAS) v. Switzerland [GC], No. 21881/20, 27 November 2023, paragraphs 150-152 ;160.

[31] Nikolić v. Serbia, No. 15352/11, 19 October 2021, paragraphs 36-37.

21. The Court's interpretation of the requirement to raise a Convention complaint at the domestic level has also not substantially changed. While the Court does not require the applicant to raise a specific Convention provision in his/her complaints before the appropriate domestic courts, it has consistently held that the rule of exhaustion of domestic remedies requires that the complaints made subsequently at the international level should have been aired before the appropriate domestic courts at least in substance.[32]

c. *Concluding remarks*

22. The principle of subsidiarity and the doctrine of margin of appreciation have had considerable visibility in the Court's judgments in the last 24 years (the period examined by the CDDH), with increasing frequency of references from the initiation of the Interlaken reform process in 2010, the adoption of the Brighton Declaration in 2012, and peaking in 2014 and 2015. Arguably, the prospect of entry into force of Protocol No. 15 already had an impact in terms of influencing their visibility in the case law. The Court is the main actor referring to both the terms of subsidiarity and margin of appreciation in its judgments. The new preambular recital introduced by Article 1 of Protocol No. 15 has been referred to in a limited number of occasions in the Court's judgments, with the Court being the main actor to refer to it.

23. The CDDH observes that the principle of subsidiarity and the margin of appreciation are referred to in judgments involving substantive provisions of the Convention, Articles 1 and 3 of Protocol No. 1, as well as Articles 15 to 18 and Article 35. The core elements of the Court's conceptualisation of its subsidiary role and the margin of appreciation have not changed since the entry into force of Protocol No. 15. The Court emphasises that it is primarily for national authorities, legislative or judicial, to devise, interpret and apply domestic law in a manner that gives full effect to the Convention. Its role is ultimately to determine whether the way in which that law is interpreted and applied produces consequences that are consistent with the principles of the Convention.

III – The age criterion for judicial appointment on the Court and for termination of office

24. Article 2 of Protocol No. 15 introduced a new paragraph 2 into Article 21 of the Convention which requires that candidates for the post of judge of the Court be less than 65 years of age at the date by which the list of three candidates has been requested by the Parliamentary Assembly further to its role in electing judges under Article 22 of the Convention. Article 2 of Protocol No. 15 also deleted paragraph 2 of Article 23 of the Convention that had provided for the expiry of the terms of offices of judges when they reach the age of 70.

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[32] Azinas v. Cyprus [GC], No. 56679/00, 28 April 2004, paragraph 38; Vučković and Others v. Serbia (preliminary objection) [GC], nos. 17153/11 and 29 others, 25 March 2014, paragraph 75; Unseen ehf. v. Iceland (dec.), No. 55630/15, 20 March 2018, paragraph 14. In a decision delivered after the entry into force of Protocol No. 15, the Court has required the relevant Convention rights to have been expressly invoked in domestic proceedings (*Lee v. the UK* (dec.), No. 18860/19, 7 December 2021, paragraphs 69-77. Nevertheless, a statistical analysis of judgments and decisions concerning Article 35 after the entry into force of Protocol No. 15 shows that this judgment has not been quoted by the Court. Cases establishing that complaints made subsequently to the Court should have been aired before the appropriate domestic courts at least in substance, by contrast, continue to be frequently cited before and after the entry into force of Protocol No. 15. See also DH-SYSC-PRO(2024)08REV, pp. 23-24. This analysis covers a total of 10 590 cases, including 2 008 judgments and 8 582 decisions drawn from HUDOC (which does not include all inadmissibility decisions). *Azinas v. Cyprus* has been cited 51 times; *Vučković and Others v. Serbia* has been cited 206 times; *Unseen ehf. v. Iceland* has been cited once. *Lee v. UK* has not been cited by other cases regarding Article 35.

25. According to the Protocol's Explanatory Report (paragraph12), "[t]his modification aims at **enabling highly qualified judges to serve the full nine-year term** of office and thereby reinforce the consistency of the membership of the Court. The age limit applied under Article 23, paragraph 2 of the Convention, as drafted prior to the entry into force of this Protocol, **had the effect of preventing certain experienced judges from completing their term of office.** It was considered no longer essential to impose an age limit, given the fact that judges' terms of office are no longer renewable."

26. In accordance with Article 8, paragraph 1, of the Protocol, the changes to Articles 21 and 23 of the Convention applied only to judges elected from lists of candidates submitted to the Parliamentary Assembly by High Contracting Parties after the entry into force of the Protocol. Candidates appearing on previously submitted lists, judges in office and judges-elect at the date of entry into force of Protocol No. 15 continued to be subject to the rule applying before that date, namely the expiry of their term of office when they reach the age of 70 (see Explanatory Report to the Protocol, paragraph 15).

27. The CDDH has analysed the information available on the Court's and Assembly's respective websites concerning the terms of office of judges serving during the period between the entry into force of Protocol No. 11, which introduced the upper age limit of 70 (1 November 1998), and the entry into force of Protocol No. 15, which removed this limit (1 August 2021). It notes that 15 judges left the Court upon reaching the age of 70 before the six or nine-year limit had been reached. The term of office of one judge currently in office will expire before nine years due to reaching the age of 70. Six other judges who had reached the age of 70 remained in office until they were replaced.[33] During the period between 1 November 1998 and 1 October 2010,[34] five judges who were 65 years old or more at the end of the six-year term of office and could have in principle been re-elected were not included in the subsequent lists of candidates submitted to the Assembly.

28. None of the judges elected after the entry into force of Protocol No. 15 will reach the age of 70 before the end of their terms of office. Indeed, all of these judges were under 60 years of age when they were elected.

29. The introduction of the age-limit of less than 65 years of age for candidates for the post of the judge is fully taken into account in the practice of the Assembly inviting the States Parties to submit lists of candidates. The selection procedure is triggered by a letter of the Secretary General of the Assembly inviting the government to submit a list of candidates. The letter draws attention to the fact that "[s]ince the entry into force of Protocol No. 15 to the European Convention on Human Rights, on 1 August 2021, a new age limit (less than 65 years of age at the date by which the Secretary General of the Assembly invited the government to submit a list of candidates, that is, in this case, [the date indicated in the letter]) will apply and the previous age limit of 70 in force before Protocol No. 15 no longer applies."[35]

30. The CDDH notes that Article 2 of Protocol No. 15 has achieved its objective of avoiding situations in which experienced judges were prevented from completing their term of office because they had reached a particular age.

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[33] According to Article 23, paragraph 2, of the Convention judges hold office until replaced. For one of these judges the time at which the judge was replaced corresponded to the end of the nine-year term of office.

[34] Date of entry into force of Protocol No. 14, which replaced the term office of six years with the possibility of being re-elected one or several times with the single nine-year-term of office.

[35] SG-AS (2024) 01 Memorandum prepared by the Secretary General of the Parliamentary Assembly "Procedure for the election of judges to the European Court of Human Rights", Model letter in Appendix I.

IV. Relinquishment of jurisdiction by a Chamber in favour of the Grand Chamber - parties' objections

31. Article 30 of the Convention was introduced by Protocol No. 11 which entered into force on 1 November 1998. It provided "[w]here a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or the protocols thereto, or where the resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court, the Chamber may, at any time before it has rendered its judgment, relinquish jurisdiction in favour of the Grand Chamber, unless one of the parties to the case objects." [36]

32. Article 3 of Protocol No. 15 amended Article 30 of the Convention by removing the condition according to which a chamber was barred from relinquishing jurisdiction to the Grand Chamber when one of the parties had objected to it. The Protocol's Explanatory Report (paragraphs 16-17) states that "[t]his measure is intended to contribute to consistency in the case-law of the Court, which had indicated that it intended to modify its Rules of Court (Rule 72) so as to make it obligatory for a Chamber to relinquish jurisdiction where it envisages departing from settled case-law. [The r]emoval of the parties' right to object to relinquishment will reinforce this development. The removal of this right would also aim at accelerating proceedings before the Court in cases which raise a serious question affecting the interpretation of the Convention or the Protocols thereto or a potential departure from existing case-law."

33. The CDDH has sought to identify potential inconsistencies in the case law of the Court which Article 3 of Protocol No. 15 was intended to avoid. It has therefore analysed whether during the period before the Protocol's entry into force, the Grand Chamber had found that chambers' judgments delivered in cases in which parties had objected to the chambers' intention to relinquish jurisdiction had departed from settled case law. The CDDH relied on data provided by the Registry, as well as information shared by its members who are government agents before the Court. For the period after the entry into force of Protocol No. 15, the CDDH has analysed the length of proceedings in cases in which chambers relinquished their jurisdiction in favour of the Grand Chamber. It has also looked into the Court's communications to the parties in the framework of intended relinquishment of jurisdiction, in the light of the High Contracting Parties' expectations indicated in the Explanatory Report to the Protocol.

a. Period before the entry into force of Protocol No. 15

34. During this period (1 November 1998 to 1 August 2021), parties exercised their right to object to relinquishment in 28 out of the 178 cases in which chambers intended to relinquish jurisdiction in favour of the Grand Chamber. In 21 of the 26 cases dealt with by chambers due to a party's objection to relinquishment,[37] the parties then availed themselves of the possibility to request re-examination of the chambers' judgments, which requests were accepted in 10 cases.

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[36] According to the Explanatory Report to Protocol No. 11 (paragraphs 4, 79), the reason for making relinquishment subject to the approval of the parties is to secure the possibility that a re-hearing is not adversely affected in exceptional cases, for example those raising serious questions affecting the interpretation or application of the Convention. Protocol No. 11 also introduced Article 43 of the Convention which provided that within a period of three months from the date of the judgment of a Chamber any party to a case may, in exceptional cases, request that the case be referred to the Grand Chamber. A panel of five judges of the Grand Chamber shall accept the request if the case raises a serious question affecting the interpretation or application of the Convention or the protocols thereto, or a serious issue of general importance. The purpose, according to the Explanatory Report to Protocol No. 11 (paragraph 47), is to ensure the quality and consistency of the Court's case-law by allowing for a re-examination of the most important cases if the conditions set by Article 43 are met.

[37] Two cases were relinquished to the Grand Chamber: Grzeda v. Poland, no. 43572/18, 15 March 2022; X and Others v. Austria no. 19010/07, 19 February 2013.

35. Based on information available to it, the CDDH has been able to identify five cases in which there had been an objection to relinquishment and that were subsequently referred to the Grand Chamber under Article 43.[38] In most of these cases, the Grand Chamber ruled consistently with the Chambers as regards violations of the Convention articles relied upon by the applicants. In one case the Grand Chamber disagreed with the chamber concerning violation of one of the Convention articles relied on by the applicant.[39] On the basis of this very limited sample of five cases, it can be observed that when a chamber was obliged not to relinquish jurisdiction due to parties' objections, this was only very rarely followed by a judgment that was inconsistent with the settled case-law.

b. Period after the entry into force of Protocol No. 15

36. The Rules of Court were amended on the day of entry into force of Protocol No. 15 to reflect Article 3 thereof. The amendment to Rule 72 paragraph 2 made the relinquishment of jurisdiction from chambers to the Grand Chamber obligatory where the resolution of a question raised in the case before a chamber might have a result inconsistent with the Court's case law.

37. Chambers relinquished jurisdiction in favour of the Grand Chamber in 13 cases. In all but one of these cases, applications were lodged and communicated before the entry into force of Protocol No. 15.[40] The prospect of the removal of the parties' right to object to the relinquishment of jurisdiction by Article 3 of Protocol No. 15 appears in some cases to have discouraged parties from making objections even before the Protocol entered into force.[41]

38. The experience with relinquishment of jurisdiction from Chambers to the Grand Chamber under Article 30 of the Convention, as amended by Protocol No. 15, is limited. In the first four years of the Protocol, the removal of the parties' right to object to a Chamber's intention to relinquish jurisdiction has not created an additional caseload for the Grand Chamber. On the other hand, the removal of the parties' right to object does not appear to have had a direct effect in terms of shortening the length of proceedings in cases where relinquishment has taken place. Of the 13 cases relinquished after the entry into force of Protocol No. 15, 11 have so far been finalised by the Court within different periods ranging generally from one to five years.

39. Under Rule 72 paragraph 3 of the Rules of Court, the registrar shall notify the parties of the Chamber's intention to relinquish jurisdiction and invite them to submit any comments. According to the information received from Governments' agents, since the entry into force of the Protocol, this has generally taken place after the conclusion of the written procedure before the Chamber,

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[38] Al-Dulimi and Montana Management Inc. v. Switzerland, no. 5809/08 21 June 2016; Öcalan v. Turkey no. 46221/99, 21 May 2005; Mamatkulov and Abdurasulovic v. Turkey nos. 46827/99 and 46951/99, 4 February 2005; Guiso-Gallisay v. Italy no. 58858/00 (just satisfaction), 22 December 2009; Kudrevičius v. Lithuania, no. 37553/05, 15 October 2015.

[39] Kudrevičius v. Lithuania, no. 37553/05, 15 October 2015, paragraphs 161-182.

[40] According to Article 8, paragraph 2, of the Protocol, "[t]he 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."

[41] DH-SYSC-PRO(2024)09REV2 Relinquishment of jurisdiction of Chambers in favour of the Grand Chamber – compilation of Government Agents' replies to a request for information of the DH-SYSC-PRO Chair. Two government agents have noted that the letters that they received from the relevant Chambers informing them of their intention to relinquish jurisdiction in favour of the Grand Chamber, had recalled that the States Parties to the Convention had concluded in the framework of the High Level Conference on the future of the European Court of Human Rights in Brighton that Article 30 should be amended by removing the possibility to object to relinquishment by a Chamber. The letters had also recalled that the Conference encouraged State Parties to refrain from objecting to any proposals for relinquishment by a Chamber pending entry into force of an amending instrument. In two cases the government was invited to confirm that it would not oppose to the relinquishment. See also Press Release ECHR 066 (2021), 18/02/2021, Grand Chamber to examine case concerning judicial reform in Poland. The Court has in one case found that the signature of the Brighton Declaration and the subsequent ratification of Protocol No. 15 by one State Party manifested an undertaking to observe its objectives pending its entry into force.

that is after the exchange of observations on the merits and just satisfaction.[42] The invitation to comment appears to reflect the expectation as recorded in the Explanatory Report to Protocol No. 15 (see paragraph 18) that the Chamber will consult the parties on its intention to relinquish. In practice, the Court does not generally give reasons for its intention to relinquish jurisdiction or for its decision to do so. The degree to which the Court takes into account the parties' comments is a matter for the Court's discretion, however providing reasons would allow for fuller consultation with the parties.

40. According to the information provided by the Registry, the questions that are posed to the parties in Grand Chamber proceedings cover all the legal issues that appear to arise in each case and guide the parties in a neutral manner, without prejudging the stance that the Grand Chamber may later take on the issue. In the cases in which the possibility of departing from or developing the existing case-law arises, the questions have been clearly framed to obtain the parties' views on this. The level of precision with which the matter is framed can vary from case to case.[43] This practice appears to meet the expectation recorded in the Explanatory Report to Protocol No. 15 (paragraph 19) that "the Grand Chamber will in future give more specific indication to the parties of the potential departure from existing case-law or serious question of interpretation of the Convention or the Protocols thereto."

c. *Concluding remarks*

41. Prior to the entry into force of Protocol No. 15, parties had exercised their right to object to relinquishment from chambers to the Grand Chamber occasionally. Although in most of those cases, parties availed themselves of the possibility to request re-examination of the chambers' judgments by the Grand Chamber, only a small minority of these requests were accepted. In the first four years since the Protocol entered into force, relinquishment of jurisdiction has taken place in a limited number of cases, with most applications having been lodged and communicated to the parties before its entry into force, when the parties still had the right to exercise their right to object to relinquishment. The removal of this right does not appear to have accelerated proceedings before the Court.

V. Admissibility criteria

a. Time limit for lodging applications

42. Article 4 of the Protocol amended paragraph 1 of Article 35 of the Convention, reducing the time limit for lodging applications with the Court from six to four months. According to the Explanatory Report to the Protocol, "[t]he development of swifter communications technology, along with the time limits of similar length in force in the member States, argue for the reduction of the time limit."

43. The DH-SYSC-PRO sought to ascertain how many applications had been found inadmissible on the ground that they did not respect the time limit provided by Article 35, paragraph

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[42] DH-SYSC-PRO(2024)09REV2.

[43] For example, in Duarte Agostinho and others v. Portugal and 32 others [GC], No. 39371/20, 09/04/2024, the parties were asked to address whether the current case-law on jurisdiction "need[ed] to be further developed in order to take account of the specific characteristics of climate change". In Sanchez-Sanchez v. UK, No. 22854/20 [GC], 03/11/2022, in which the Grand Chamber overruled the Trabelsi judgment, the parties were asked "to what extent should the principles that have been developed in the Court's case-law under [Article 3] regarding the necessary reducibility of whole-life sentences (life without parole) be applied in the context of extradition to a State that is not a member of the Council of Europe?"

1 of the Convention. This data was not made available.[44] Therefore, the CDDH cannot evaluate the effects of Article 4 of Protocol No. 15.[45] The Court may wish to consider enhancing its record-keeping practices to ensure greater accuracy and efficiency in the gathering of such data with a view to facilitating any future evaluations of this Article. It should, however, be noted that the Court has taken various steps to publicly communicate the new time limit introduced by this provision of the Protocol, notably by means of press releases,[46] updating the information on its website regarding the application procedure and publishing a video explainer. Lastly, the CDDH takes note of the survey carried out by the Council of Bars and Law Societies in Europe on the impact of the Article 4 of Protocol No.15 but due to the limited information provided in it, it is not able to draw conclusions for the purposes of the present report. [47]

b. Modification of the significant disadvantage criterion

44. Article 35, paragraph 3, sub-paragraph b, of the Convention was introduced by Protocol No. 14, which entered into force on 1 June 2010. It provided that "[t]he Court shall declare inadmissible any individual application submitted under Article 34 if it considers that: […] the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal."

45. Article 5 of Protocol No. 15 deleted the *proviso* that no case may be rejected which has not been duly considered by a domestic tribunal. In the Court's practice this had been referred to as the second safeguard of the admissibility criterion laid down in Article 35, paragraph 3, sub-paragraph b, of the Convention.[48] The first safeguard, namely the requirement of an examination of an application on the merits where required by respect for human rights, remains.

46. The Explanatory Report to Protocol No. 15 (paragraph 23) stated that "[t]his amendment is intended to give greater effect to the maxim *de minimis non curat praetor"*. The relevant footnote states "[i]n other words, a court is not concerned by trivial matters."

47. To evaluate the effects of Article 5 of Protocol No. 15, the CDDH has examined the period before its entry into force, based on data provided by the Registry, the Court's application of the second safeguard with a view to understanding its impact on the Court's dismissal of unmeritorious applications.

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[44] DH-SYSC-PRO(2024)10REV Information provided by the Registry on questions relating to Articles 1, 3, 4 and 5 of Protocol No.15. To the DH-SYSC-PRO's questions on the numbers of applications found inadmissible on the ground of not respecting the limit set by Article 35 paragraph 1 of the Convention before and after 1 February 2022, the Registry responded that it was not possible to extract clear data relating only to the time limit. It further noted that many applications are rejected as inadmissible for multiple reasons, of which the time limit is one. In such cases the marker for the case in the IT system is a general one. From 2018 to 2024, on average around 27 500 applications were declared inadmissible or struck out by a single judge annually. The majority of these cases include multiple reasons for inadmissibility and are considered 'globally inadmissible'. It is not possible to identify how many may have included 'out of time', among the reasons for inadmissibility. Inadmissibility decisions given by Committees and Chambers, which are available on the HUDOC database, set out the reasons for which an application is inadmissible.

[45] DH-SYSC-PRO(2024)10REV.

[46] For example, Press Release ECHR 032 (2022), 1/2/2022, The time-limit for applying to the European Court of Human Rights is four months from the date of the final domestic decision.

[47] DH-SYSC-PRO(2025)03 Information provided by the Council of Bars and Law Societies in Europe (CCBE) in relation to Articles 4 and 5 of Protocol No. 15.

[48] The Court has noted in its case law that the admissibility criterion set forth in Article 35, paragraph 3 (b) of the Convention is applicable only in the event that the applicant has suffered no significant disadvantage and provided that the two safeguard clauses contained in the same provision are respected. See for example, Varadinov v. Bulgaria, no. 15347/08, 5 October 2017, paragraph 25; Lobzhanidze and Peradze v. Georgia, nos. 21447/11 35839/11, 27/02/2020, paragraph 61, 76.

48. Article 35, paragraph 3, sub-paragraph b, of the Convention was examined by Chambers in approximately 154 applications out of approximately 650 995 dealt with by the Court during the period from 1 June 2010 to 1 August 2021. Of these 154 applications, the Court declared inadmissible 53 of them (35%), having been satisfied that the relevant cases had been duly considered by a domestic tribunal.[49] These applications represent an extremely small minority of the total number of applications declared inadmissible and struck out by the Court for the period under examination.[50] Of the 154 applications, the Court declared 101 applications admissible (65%). In only five of these, the Court relied decisively on the non-fulfilment of the second safeguard in its decisions to declare the relevant applications admissible.[51] In four of the five cases the Court found a violation of the Convention.

49. Thus, before the entry into force of Protocol No. 15, the significant disadvantage admissibility criterion provided in Article 35, paragraph 3, sub-paragraph b, of the Convention had been applied in a very limited number of cases compared to the number of cases dealt with by the Court. The application of the second safeguard appears to have led to judgments in a very small number of cases which would have resulted in inadmissibility decisions without that safeguard.

50. After the entry into force of Protocol No. 15,[52] Article 35, paragraph 3, sub-paragraph b of the Convention was examined by a Chamber of the Court in 26 applications and applied in 4 of them.[53] This represents an extremely small minority of the total number of applications declared inadmissible and struck out by the Court for the period under examination.[54]

51. The CDDH observes that the significant disadvantage admissibility criterion has been applied in a very limited number of cases compared to the overall number dealt with by the Court, both before and after Protocol No. 15 entered into force. The removal of the requirement - that the case has been duly considered by a domestic tribunal - from this admissibility criterion appears to have had a marginal effect. This is mostly due to the fact that before the Protocol entered into force, the Court had only relied decisively on this requirement to declare applications admissible in a limited number of cases.

VI – Conclusions

52. It is a relatively short period of time since Protocol No. 15 entered into force in August 2021. The changes introduced by Protocol No. 15 as a whole were part of the Interlaken Process to reform the Convention system with a view to increasing efficiency and emphasising the notion of shared responsibility between the Court and State Parties in the implementation of the Convention.

53. Regarding Article 1 of Protocol No. 15, its entry into force has not had a discernible effect on the number of references to the principle of subsidiarity and the doctrine of margin of appreciation in the Court's judgments. The CDDH has observed a significant increase in these

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[49] In Shtefan and Others v. Ukraine, nos. 36762/06 and 249 others, 31/07/2014, the Court did not specifically examine the second safeguard.

[50] 0,00008 % of the approximately 607 180 cases declared inadmissible or struck out by the Court.

[51] Six cases concerned Article 6 of the Convention, one concerned Article 5, paragraph 3 of the Convention and one Article 1 of Protocol No. 1. Dudek v. Germany (dec.), No. 12977/09 and 4 others, 23/11/2010; Flisar v. Slovenia, No. 3127/09, 29/09/2011, paragraph28; Fomin v. Moldova, No. 36755/06, 11/10/2011, paragraphs 19-20; paragraph 34; Varadinov v. Bulgaria, no 15347/08, 05/10/2017, paragraphs 25-26; Lobzhanidze and Peradze v. Georgia, nos. 21447/11 35839/11, 27/02/2020, paragraphs 61-62; paragraphs 76-77.

[52] The cases studied cover the period from the entry into force of Protocol No. 15 to 29/02/2024.

[53] These applications concerned Articles 5, 6, 8 and 14 of the Convention and Article 1, Protocol No. 1.

[54] 0,00004 % of the approximately 74 484 cases declared inadmissible or struck out by the Court. This does not mean, however, that the criterion might not have been potentially applicable in cases that were ultimately found to be inadmissible on more straightforward grounds.

references around the time of the Brighton Conference, prior to the entry into force of Protocol No. 15.

54. In respect of Article 2 of the Protocol, amending the age criterion for judges on appointment and termination of office, the aim was to enable highly qualified judges to serve the full nine-year term of office and thereby reinforce the consistency of the membership of the Court. This appears to have been established with judges now able to serve their full term.

55. The removal of the parties' right to object to the relinquishment of jurisdiction by chambers in favour of the Grand Chamber (Article 3 of Protocol No. 15) does not appear to have had an effect in terms of accelerating proceedings in cases in which jurisdiction was relinquished. Chambers notify the parties of their intention to relinquish jurisdiction without giving reasons and invite them to comment. This invitation appears to reflect the expectation of consultation set out in the Explanatory Report to Protocol No. 15. While the degree to which the Court takes into account the parties' comments remains within its discretion, the CDDH observes that the Court's practice is generally not to give reasons for its intention to relinquish jurisdiction. In the CDDH's view, if the Court were to give reasons, this would allow for fuller consultation with the parties.

56. As regards Article 4 of Protocol No. 15, at the present time, the CDDH cannot evaluate its effects in view of the lack of information on the number of applications which have been found inadmissible on the ground that they did not respect the time limit provided by Article 35, paragraph 1, of the Convention.

57. The significant disadvantage admissibility criterion has been applied in a very limited number of cases compared to the total number of cases both before and after the entry into force of Protocol No.15. The removal from this criterion of the requirement that the case has been duly considered by a domestic tribunal (Article 5 of Protocol No. 15) appears to have had a marginal effect in the dismissal of unmeritorious applications.