Public Scrutiny

of the opinion of the European Court for Human Rights

on the Convention system including its role and workload
as stated in §1, §4 and §6 of the
"Opinion on the draft Copenhagen Declaration"

this version and the Dutch version are authentic

Introduction

At the request of the Chairman of the Committee of Ministers, the European Court of Human Rights (hereafter: the European Court) has considered the initial draft of the declaration drawn up for the high-level conference that took place in Copenhagen on 12-13 April 2018.This unanimous opinion is adopted by the Bureau in light of the discussion in the Plenary Court on 19 February 2018.

Given the nature of the exercise, coinciding with the first stages of the discussion of the draft within the Committee of Ministers, the Court's approach has been to concentrate mostly on the substance of the document, examining its themes, ideas and proposals, rather than to comment in detail on its current wording. For ease of reference, the European Court has structured its opinion so as to reflect the structure of the draft declaration. The authentic European Court's opinion is available in the section "The Manual for Public Scrutiny (…) and more documents" of this site "www.publicscrutiny.nl".

Hereafter the European Convention for the Protection of Human Rights and Fundamental Freedoms is abbreviated to the Convention.

Survey of the opinion

The document is orderly set up and after the "Introduction" is the "Commentary on the draft declaration" divided in the next paragraphs;

- Shared responsibility – better balance, improved protection (paras. 7-15)
- National implementation – the primary role of States (paras. 16-21)
- European supervision – the subsidiary role of the Court (paras. 22-30)
- Interplay between national and European levels – the need for dialogue and participation (paras. 31-42)
- The caseload challenge – the need for further action (paras. 43-54)
- Interpretation – the need for clarity and consistency (paras. 55-61)
- The selection and election of judges – the importance of co-operation (paras. 62-69)
- Execution of judgments (paras. 70-78)
- Paragraphs 79-84

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Introduction of the Public Scrutiny

(Quoted:) It would be inconceivable, in the opinion of the Court, that Article 6 para. 1 (art. 6-1) should describe in detail the procedural guarantees afforded to parties in a pending lawsuit and should not first protect that which alone makes it in fact possible to benefit from such guarantees (§35). In §36 are the fair, public and expeditious characteristics of article 6, §1 regarded without elaboration. Later is elaborated in the judgment of the Case of Pretto and Others vs Italy, 8 December 1983, §21 the cause and goal of the obligated public pronouncement of a judgment namely, to ensure scrutiny of the judiciary by the public with a view to safeguarding the right to a fair trial (Case of Pretto, §27). This case in 1983 does not change the retroactivity of each European Court's judgment and so of the public scrutiny down from the date that the Convention came in power.

The public scrutiny is a unity and an equally "established by law" or an equally by "law making treaty" (§36) established judging authority like every (disciplinary) tribunal.
The European public sizes to about 450 million citizens minus the governmental employees, public servants and officers. In article 6, §1, Convention, is also the press excluded from the public. Who are member of the public scrutiny is described in the "The Manual for Public Scrutiny (...) and more documents" (URL: www.publicscrutiny.nl, item 4). Why the public scrutiny is a unity and by what it is united is sufficiently explained in paragraph 18e further on.

Introduction of the European Court of Human Rights

The European Court has jurisdiction that shall extend to all matters concerning the interpretation and application of the Convention and the Protocols thereto (article 32, §1). In the event of dispute as to whether the Court has jurisdiction, the Court shall decide (article 32, §2). So, the European Court has dictatorship on the interpretation and application of the Convention.

The Court may, at the request of the Committee of Ministers, give advisory opinions on legal questions concerning the interpretation of the Convention and the Protocols thereto (article 47, §1). The Court shall decide whether a request for an advisory opinion submitted by the Committee of Ministers is within its competence as defined in Article 47 (article 48). So, the European Court has dictatorship on giving advisory opinions on legal questions concerning the interpretation (not the application) of the Convention.

The final judgment shall be published (article 44, §3). Advisory opinions of the Court shall be communicated to the Committee of Ministers (article 49, §3). So, the judgments of the European Court are published and therefore within the public scrutiny's jurisdiction while European Court's advisory opinions are secret and therefore outside the public scrutiny's jurisdiction.

Before taking up office, each elected judge shall, at the first sitting of the plenary Court at which the judge is present or, in case of need, before the President of the Court, take the following oath or make the following solemn declaration: "I swear" – or "I solemnly declare" – "that I will exercise my functions as a judge honourably, independently and impartially and that I will keep secret all deliberations."

The obligatory principles for any scrutiny of the judiciary

Good faith is surely absent because otherwise each dispute has two justices while only one is possible to be in line with the author; respecting good faith without discrimination makes a just scrutiny or court trial fake and useless.

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The evidences of perjury, abuse or infringements do not change that the offenders are able whether or not by accident to express just findings or conclusions. Also offending courts do not change this.

Each lawsuit is one party who executes his rights (empowerment is a right) against an opposite party who is unwilling to endure this execution. This examined case attests a government unwilling to agree with the Commission. The reason for just scrutiny is to unveil the cause in effort to a solution**:** is it a contrary right, a lack of knowledge about the (executing) right or sometimes is it to make disadvantage or worse. A judge is equipped and facilitated to disclose the legislative author's working papers to publish its cogitation, object and purpose with the law and involved articles. This is a demanded obligation.

The place and importance of the Convention

The Convention is the non-tolerant and non-exceedable outline boundary of the "Rule of Law", in which all the activities or human resulting happen (see paragraph "Introduction"). Not the same but close comparable with the safety rules for products in the society, which have their own particular rules for construction and working. So, how well and according the law a product is made, when it does not pass the safety rules it is out of use and out of the human lives in a together living society.

The Convention is a regular contract, with at one side the Contracting States and on the other side everyone (article 1, Convention). Each breach of contract has also legal results by the Agreements Rights in the country where the offences take place.

The Human Rights do not turn over roles, exchange with persons in their official capacity or turn over the occurred levels of power. The Human Rights is nothing more and nothing less then an equalizing power.

Final Conclusions on the opinion within the Human Rights

1. Deliberately ignoring of the public scrutiny

In §4 are recalled the distinct roles of the different actors in the system, set up by the European Convention on Human Rights. Summed up are the Contracting States, the European Court and Committee of Ministers. Deliberately is left out and completely ignored the public scrutiny on the published final judgements of the European Court.

2. Always an intolerable unfair judging

Nowhere recognises the European Court that itself and any national Court is <u>always the last</u> in line. This excludes a fair trial by the judging by opinion when this opinion is (was) not known beforehand when the private parties started escalating of their dissension. An unfair trial is standard to benefit a party and hereby thus non-impartiality. Destroying a fair trial by judging by opinion is a criminal offence like by perjury.

3. Fatal despise of the origin of the European Court

The European Court states in §28**:** (quote) "It is relevant to recall that there is no formal doctrine of precedent in the Convention jurisprudence.". This formal statement is a deep and fatal despise for the original Court and a very few that followed. All later European Courts offended and still offends the binding force by Article 46, of the authentic interpretations in the earliest judgments. All later 'judgments' are indisputable criminal offences.

The fatality of the later European Courts' despises in and by their 'judgments' is the world wide spreading (by publication and press' emphasizing) practice and usage of this despise

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for and ignoring of precedent judgments. The European Court recognises this spreaded practice and usage and states in §32: (quote) "the repetitive cases that derive from a failure to adequately execute a previous judgment, its docket still includes an excessive number of applications of this sort.". However, the European Court persists in creating 'new' interpretations in 'new' judgments by means of juggling with words or sentences to mislead everyone, into the magical world on paper.

In reality does the European Court drift away from the origin of peace which is analysed in the preamble of the Universal Declaration ((quote:) "Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,"), by the nations who experienced lively the consequences <u>and</u> the preamble is at once the prediction of the result when it is whipped out. The European Court reveals the process of drifting away and how it is done and the self-motivation to persist in drifting away and its process.

4. Betrayal on Human Rights

In the paragraph 3 above is well explained that despise of the origin of the European Court is criminal and fatal and also why this is. The quote is a fatal and most criminal expression of mind or moral character. Firstly because this combats against the considered principle of interpreting that a Human Right in express terms includes implied rights and it is the European Court's duty to ascertain the implied rights (*the legal frame of article 6, §1 in the case of Golder vs. the United Kingdom, 21 February 1975, §28*). Secondly because this at once evidences the unprecedented despise of preceding high moral characters in the European Court (Article 21, §1, Convention) starting at the first European Court. Thirdly is the denial of precedence directly an abuse of Article 17 because the European Court (group or persons in Article 17) abuses everyone's right that by means of interpretation determined Human Rights are not limited by a later new interpretation in a later new judgment to a greater extend as provided for in the Convention. (Article 17, Convention). Fourthly abuses the European Court everyone's right to receive from it information about the Convention's author's object and purpose and intentions with its Convention and impart these; thus it offends Article 10, 17 and 18 of the Convention. Fifthly is each later, dissenting interpretation in a later judgment a discrimination and directly an abuse of Article 14.

The European Court presumes in §11 the difference of cases by different circumstances with: (quote) "applied in many different circumstances". This ignores the fact that in the circumstances reveal the difference of cases <u>and</u> the similarities of cases. So, a judgment must identify the case to verify by the public scrutiny why it is different or similar.

5. Betrayal on legal certainty and legal order

The European Court states in §28: (quote) "the Court has recognised – and reiterates here – the need for a high degree of consistency in the interpretation and application of the Convention.". And next: (quote) "it is in the interests of legal certainty, foreseeability and equality before the law that it should not depart, without cogent reason, from precedents laid down in previous cases". The European Court directs with a note (4) to its own judgment and not a Convention article plus it directs to a quite recent judgment and not to one of the first judgments. Further finally the European Court states (quote) "It makes appropriate use of the mechanisms established by the Convention for avoiding inconsistency in the case-law, i.e. the relinquishment or the referral of cases to the Grand Chamber.".

The quotes contradict the European Court's and national court's business in the successive paragraph. Also the quotes contradict the denial of precedence (paragraph 3 above) and the excessive number of repetitive cases (paragraph 6 below, sub-paragraph "Business

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solution that destroys Human Rights"). Finally the quotes anchor the only adequate solutions (paragraph 6 below, sub-paragraph "Non-business solution that protects")

6. European and national courts are a business

The European Court states in §6 its workload and the increase of this workload. It states in §6 the main work: an increased number of applications and adding in §32: process of repetitive cases. It welcomes in §20 the support for the (its) applied strategies and it states to focus on to increase the institution's capacity to process and decide applications. Further, it states in §23 temporary secondments to the registry. To round up: all this is business with the business model and the business plan. All this evidences at once that when money is involved immediately the Human Rights are absent or destroyed.

Finally creates the European Court an unprecedented chaos against legal certainty, foreseeability, equality or legal order by stimulating everyone to new opinions that are –when liked– determined as new interpreted Human Right(s). (Recalling the quote in §28: "As already indicated in paragraph 16 above, the Court welcomes the idea of increased participation in Grand Chamber proceedings.") These acts or engagements are outside its jurisdiction and hereby illegal from the moment it is exercised.

7. The European Court recognises the Human Rights as charity

The European Court states in §18: (quote) "the possibility of ongoing dialogue at a political level among States about the development of the Court's case-law in certain areas. It is not for the Court, as a judicial institution, to comment on such a proposal, apart from noting that it is presented subject to the important provisos of respect for the Court's independence and the binding character of its judgments.". (*) This humble begging is contradicting the European Court's determination in concern to the Convention: (quote) "Given that it is a law-making treaty" (case of Wemhoff vs. Germany, 27 June 1968, p. 19, §8). (*) This humble begging for resources; this humble begging for respect for the Court's independency; this humble begging for respect for the binding character (not begging for the binding force as Article 46 prescribes); the excessive number of repetitive cases by the failure to adequately execute a previous judgment (§32); the fulfilling of requests by Declaration (§19); single and all together evidences the only real power in practice plus that there not is and never shall be an independent court, judge or judiciary neither in Europe or national. (*) A law-making treaty directs not solely top-down but also bottom-up. (*) A law-making treaty establishes indestructible the given rights according the definition of a lawful right: the unhindered enjoy of exercise the given rights. (*) Being independent is not the right of a tribunal but an independent tribunal is a Human Right of each private individual. (*) A Contract State's respect for the binding character of any judgment of also the public scrutiny's judgments is false; it is a guarantee thus an obligation of each Contract State.

Nevertheless, is stated the nowadays charity and act of mercy by the real power in practice: there is no independent court, judge or judiciary and there will never be one. Also is implicit stated the suppression top-down with each level divided by a latent discrimination line top-down.
Above the line can be permitted by themselves what 'they' forbid to the people under it. **Emphasized** by the European Court that states in §19: (quote) "The Court recalls that in spite of the pressure of its case-load, in 2017 it successfully introduced a system for providing more extensive reasons for single judge decisions, as requested in the Brussels Declaration." So, the European Court destructs voluntarily its independency from the supplier of resources and makes itself accessory to the leadership by the Council of Europe.

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8. Solutions

The brainless combat

Using the monetary system in the capitalistic way has its fundaments in firstly making the people poor so they remain working and secondly that who pays most gets what is wanted or needed. In line with this is the competition above the latent discrimination line is to steal the most money. So, the capitalistic powers destroy standard Human Rights and in their imagination does Human Rights combat the capitalistic system. Fantasy and fear collide.

Business solution that destroys Human Rights

The European Court states in §24 to be prepared to examine a suggestion in the context of non-executed pilot judgments. It states in §32 an excessive number of repetitive cases by the failure to adequately execute a previous judgment. Then it states, this as resulting from dysfunctions in national human rights protection. Next the European Court states the critical importance of effective execution and calls for special emphasis in the declaration. These statements clarify the European Court's denial of precedence (paragraph 3, above) and its counteractions to correct, legal interpreting (www.publicscrutiny.nl, chapter "The Manual for Public Scrutiny (…) and more documents", document "Inventory of identifiers").

Non-business solution that protects Human Rights

The core of an adequate solution for <u>protection</u> on Human Rights is to end the brainless combat and make fantasy and fear companions. In short**:** destroy permanent the business of European and national courts and judiciary connected to the restore of democracy –that is the legal public scrutiny– in each "Rule of Law".
(*)The European Court states in §28**:** (quote) "the need for a high degree of consistency", "the interests of legal certainty, foreseeability and equality" and "avoiding inconsistency in the case-law". **However,** these are no needs, interests or mechanisms at all; **instead:** these are actions and a must to do.
(*) The European Court states in §28**:** (quote) "that it should not depart, without cogent reason, from precedents laid down in previous cases", however does Article 14 "Prohibition of discrimination" describe no restrictions at all. The European Court is obligated to reiterate in each successive and necessary judgment the inherited already determined clearing by means of legal interpretation of each deliberated article.
(*) Next but separate to the preceding solution is the obligation of one judgment for everyone in equal cases (non-restrictive prohibition of discrimination). Simply to stop retroactive the excessive number of interpretations on one article.
(*) The European Court states in §28**:** (quote) "It makes appropriate use of the mechanisms established by the Convention for avoiding inconsistency in the case-law, i.e. the relinquishment or the referral of cases to the Grand Chamber.", however is definitely not the adequate solution that dissolve the cause which are both recognised in §32**:** (quote) "Effective execution (…) as it ensures (…) the Court is not called on to address numerous repetitive complaints resulting from dysfunctions in national human rights protection which have already been identified.". **Emphasizing again**, that when a paper like the Convention and the unavoidable, clarifying first interpretations is not effective observed than producing more papers (by others too) is no solution at all.

Not deliberated solution that protects

(*) The European Court must not abuse its jurisdiction by creating work and job creation, not applying Human Rights into national law. The European Court must stop its interpreting that has effectively stopped before 1990 and start the effective execution by national courts of Human Rights as the Convention's author intended and purposed. Any improving interpretation after 1990 evidences bad work in preceding judgments.
(*) Next but separate to the preceding solution is the obligation to stop judging based on opinion to stop the many judgment with created differences of cases and all kinds of different rights. Courts, judges and judiciary will always be the last in line.

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(*) The European Court must enforce in each Contract State the institution of an executive power authority (Article 13, Convention) to execute the legal Public Scrutiny's judgments on the involved court, judges and judiciary.

Excuses are impossible

Besides that the despise for judgments of the European Court, firstly was done and still continues to be done by this Court itself, then the following.
The European Court states in §6**:** (quote) "that the Court faces at present (an increased number of applications, a substantial backlog, problems associated with interstate cases and the duration of proceedings, to name but a few)." Resulting in (quote) "the need to supplement the Court's resources and called on States to consider making voluntary contributions to the Court's special account." In §23 is referred to temporary secondments to the registry. **However,** the European Court has impossible an excuse as it determined in the case of De Cubber v. Belgium, 26 October 1984, §34. Belgium violated the Convention and defended (quote)**:** " From 1970 to 1984, the workload of such courts had more than doubled, whereas there had been no increase in the number of judges.". The European Court applied in §35 the interpretation (quote)**:** "The Court recalls that the Contracting States are under the obligation to organise their legal systems "so as to ensure compliance with the requirements of Article 6 para. 1 (art. 6-1)" and a bit further (quote:) "The Court's task is to determine whether the Contracting States have achieved the result called for by the Convention, not to indicate the particular means to be utilised.". This determination is equally valid for the European Court itself.

Note:

Specifically this judgment is limited to the most important topics.

This public scrutiny's judgment is cooperative in harmony with the public scrutiny's other judgments at this site in section "The Public Scrutinies".

The authentic opinion of the European Court is available at this site "www.publicscrutiny.nl" in the chapter "The Manual for the Public Scrutiny (…) and more documents"

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