STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

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DRAFTING GROUP 'B' ON THE REFORM OF THE COURT (GT-GDR-B)

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Draft Protocol No. 15 to the Convention

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Preamble

The High Contracting Parties to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention"),

Having regard to the Declaration adopted at the High-level Conference on the Future of the European Court of Human Rights, held in Brighton on 19-20 April 2012, as well as the Declarations adopted at the Conferences held in Interlaken on 18-19 February 2010 and Izmir on 26-27 April 2011;

Having regard to Opinion No. … (20…) adopted by the Parliamentary Assembly of the Council of Europe on …;

Considering the need to ensure that the European Court of Human Rights (hereinafter referred to as "the Court") can continue to play its pre-eminent role in protecting human rights in Europe,

Have agreed as follows:

Article 1

At the end of the Preamble to the Convention, a new paragraph shall be added, which shall read

"Affirming that the High Contracting Parties[, {in accordance with / based on} the principle of subsidiarity and subject to the supervisory jurisdiction of the Court,] have the primary responsibility to secure the rights and freedoms defined in this Convention and the Protocols thereto, and in doing so [enjoy] / [have] a margin of appreciation [that the Court defines]."[1]

Article 2

[1   In Article 21 of the Convention, a new paragraph 2 shall be added, which shall read

"Judges shall be less than 66 years of age on 1 January in the year during which their term of office commences."

2   Paragraphs 2 and 3 of Article 21 shall become paragraphs 3 and 4 of Article 21 of the Convention respectively.]

OR

[1   In Article 22 of the Convention, a new paragraph 2 shall be added, which shall read

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[1] Alternative proposal: "Affirming that the High Contracting Parties have the primary responsibility to secure the rights and freedoms defined in this Convention and the Protocols thereto, and in doing so [enjoy] / [have] a margin of appreciation [that the Court defines].and that therefore the Convention system is subsidiary to the safeguarding of human rights at national level."

"Candidates shall be less than 65 years of age at the date by which [the list of three candidates has been requested by the Parliamentary Assembly / the election is expected to take place]."

[3 / 2]   Paragraph 2 of Article 23 of the Convention shall be deleted. Paragraphs 3 and 4 of Article 23 shall become paragraphs 2 and 3 of Article 23 respectively.

Article 3

In Article 30 of the Convention, the words "unless one of the parties to the case objects" shall be deleted.

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 5

In Article 35, paragraph 3.b. of the Convention, the words "and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal" shall be deleted.

Final and transitional provisions

Article 6

1   This Protocol shall be open for signature by High Contracting Parties to the Convention, which may express their consent to be bound by

a   signature without reservation as to ratification, acceptance or approval; or

b   signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.

2   The instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 7

This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which all High Contracting Parties to the Convention have expressed their consent to be bound by the Protocol, in accordance with the provisions of Article 6.

Article 8

1   The changes in the age requirement introduced by Article 2 of this Protocol shall not apply to the following:
    a. judges in office,

      b.   judges-elect or [2]

      c.   candidates on lists already submitted to the Parliamentary Assembly by the High Contracting Parties under Article 22 of the Convention,

on the date of entry into force of this Protocol

2   In the above cases, the term of office shall expire upon reaching the age of 70.

3   The amendment made 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.

4   Article 4 of this Protocol shall enter into force following the expiration of a period of one year 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.

5   All other provisions of this Protocol shall apply from its date of entry into force, in accordance with the provisions of Article 7.

Article 9

The Secretary General of the Council of Europe shall notify the High Contracting Parties to the Convention of:

a   any signature;

b   the deposit of any instrument of ratification, acceptance or approval;

c   the date of entry into force of this Protocol in accordance with Article 7; and

d   any other act, notification or communication relating to this Protocol.

In witness whereof, the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this … day of… …, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each High Contracting Party to the Convention.

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[2] [It may be necessary to revise this list if the "candidates" option in Article 2 is preferred.]