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PRINCIPLES AND METHODS OF INTERPRETATION OF THE EUROPEAN CONVENTION FOR HUMAN RIGHTS

Abstract

The ECHR represents a relatively short document. In order for it to be effective, it requires interpretation.

According to article 32(1) "The jurisdiction of the Court shall extend to all matters concerning the interpretation and application of the Convention and the Protocols", hence it is the role of the Strasbourg Court to interpret and apply the Convention. The role of the Strasbourg Court is to interpret and apply the Convention [*European Convention for Human Rights, Article 32(1)*].

An understanding of the development of the Convention case-law requires understanding of the Court's approach to its interpretation. The starting point for the Strasbourg Court were the rules of international law on the interpretation of treaties, since the convention in an international treaty. When the Strasbourg court first came to consider this question, the Vienna Convention on the Law of Treaties had not entered into force, but the Strasbourg Court decided that its provisions represented customary international law and should be applied to the interpretation of the Convention.

What no one denies is the ECHR has a special character. It penetrates the national legal orders by requiring contracting parties to behave in a particular way towards their own citizens and those citizens of other countries who are within their jurisdiction. Thus it is undisputed that the Convention has a great impact on national law. This influence seems to be at least partly due to the authoritative role played by the Court and the interpretative mechanisms and techniques developed in its case-law. The Court's jurisdiction extends to all issues concerning the interpretation and application of the Convention.

Interpretative principles and standards developed in the Court's case-law can be said to have *res interpretata* or to constitute 'interpretative authority'.

Although its main function is to decide on individual applications, the Court has accepted that its role is, more generally, to elucidate and develop the meaning of the rights protected by the Convention.

I. GENERAL REMARKS

An understanding of the development of the Convention case-law requires an understanding of the Court's approach to its interpretation [*J. Merrills, The Development of International Law by the European Court of Human Rights (Manchester 1988)]*.

The starting point for the Strasbourg Court was the rules of international law on the interpretation of treaties since the Convention is an international treaty. When the Strasbourg

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Court first came to consider this question, the Vienna Convention on the Law of Treaties had not entered into force, but the Strasbourg Court decided that its provisions represented customary international law and should be applied to the interpretation of the Convention [*Golder v. United Kingdon, (App.4451/70), 27.01.1980*].

The interpretation of the Convention has been dominated by a purposive or teleological approach drawn from the principles in the Vienna Convention which permit the application of meaning which are consonant with the object and purpose of the treaty. The Strasbourg Court has summarized its approach as follows:

'Under the Vienna Convention on the Law of Treaties, the Court is required to ascertain the ordinary meaning to be given to the words in their context and in the light of the object and purpose of the provision from which they are drawn … The Court must have regard to the fact that the context of the provision is a treaty for the effective protection of individual human rights and that the Convention must be read as a whole, and interpreted in such a way as to promote internal consistency and harmony between its various provisions … The Court must also take into account any relevant rules and principles of international law applicable in relations between the Contracting Parties… Recourse may also be had to supplementary means of interpretation, including the preparatory works to the Convention, either to confirm a meaning determined in accordance with the above steps or to establish the meaning where it would otherwise be ambiguous, obscure or manifestly absurd or unreasonable … [*Saadi v. United Kingdom (App.13229/03), 29.01.2008*].

The Court has not adopted a hierarchical approach to the application of the principles of interpretation it uses. It has viewed the task of interpretation as a single complex operation, though reference to the object and purpose of the provision in the context of the Convention as a whole has been the most influential of the principles applied by the Court, and has been described as the 'sheet anchor of the Convention's Principles of interpretation' [*S. Greer, The European Convention on Human Rights Achievements, Problems and Prospects (CUP. Cambridge 2006), p.195.*]. There are, however, a number of supplementary aids to interpretation which have led some to question the coherence of the Strasbourg Court's approach to the interpretation of the Convention. Greer observes:

'It is strange… that such an unstructured approach should have become so widely and uncritically accepted because some of the interpretive principles (for example, *democracy, effective protection and legality*) are obviously more intimately connected with the Convention's core purpose than others (for example, the *margin of appreciation* or *evolutive* and *autonomous* interpretation). This, in itself, suggests a more formal and hierarchical structure than has yet been acknowledged' interpretation' [*S. Greer, The European Convention on Human Rights Achievements, Problems and Prospects (CUP. Cambridge 2006), p.194.*].

What no one denies is that the European Convention has a special character. It penetrates the national legal orders by requiring Contracting Parties to behave in a particular way towards their own citizens and those citizens of other countries who are within their jurisdiction. What was previously treated by international law as a matter within the domestic jurisdiction of States is brought within an international system of protection and supervision.

II. APPROACHES ON THE CONVENTION INTERPRETATION

i. Evolutive and consensus interpretation

The understanding of fundamental rights is continually changing as a result of societal and technological developments and changes in views on fundamental rights [*J. Mahoney, The Challenge of Human Rights, Origin, Development and Significance, (Malden, Blackwell 2007) p.97*]. While it was a long-accepted, for example, that the notion of 'inhuman and degrading'

treatment only related to extreme situations of ill-treatment, the Court jas now recognized that caning in schools also comes within the prohibition of degrading treatment in Article 3 ECHR [*Tyrer v. United Kingdom, ECtHR 25 April 1978, appl.no.5856/72*]. In doing so, the Court mentioned expressly that 'the Court cannot but be influenced by the developments and commonly accepted standards in the penal policy of the Member States of the Council of Europe on this field. Likewise, it has gradually come to accept that the death penalty cannot be reconciled with the underlying values of the Convention [*Al-Saadoom and Mufdhi v.UK, ECtHR 2 March 2010, appl.no.61498/08, para.120*] and that conscientious objection to compulsory military service must be recognized [*Bayatyan v. Armenia, ECtHR 27 October 2009, appl. no.23459/03*].

Thus, changes in societal and legal views on a certain topic are reflected in the Court's interpretations. The rationale for adopting such an evolutive approach is obvious: if the Court were not to take developments in opinions and views into account, the Convention would quickly fall out of step with national fundamental rights law and policy, and the Court would have great difficulty in fulfilling its function to provide a pan-European minimum level of protection of fundamental rights [*Janneke Gerards and Joseph Fleuren, Implementation of the European Convention on Human Rights and of the Judgments of the ECtHR in national case-law*, p.30].

Evolutive interpretation also means that the interpretation of the Convention must be adapted to technological, factual and legal developments. The right to respect for an individual's privacy is now held to cover not only classic searches in one's home and telephone tapping, but also, for example, the placement of GPS instrument in one's car [*Uzun v. Germany, ECtHR 27 October 2009, appl.no. 23459/03*]. In the same vein, the Court has accepted that the availability of the internet has led to new fundamental rights issues that are covered by the right to privacy (e.g. personal data and the right to be forgotten) [Khelili v. Switzerland, ECtHR 18 October 2011, appl.no. 16188/07], and freedom of expression (e.g. the possibility of placing information on the internet. Such evolutive interpretations are almost unavoidable, given the Court's tasks to provide an adequate minimum level of protection.

To adapt its interpretations to present-day societal and legal views and opinions, the Court uses a special interpretative method, namely 'common ground' or 'consensus' interpretation. The method implies that the Court will usually accept a novel (mostly wider) interpretation of the Convention if there is a sufficiently clear European consensus on the classification of a certain aspect of a right as part of a Convention right [*Christine Goodwin v.UK, ECtHR (GC) 11 July 2002, appl.no.28957/95*]. Using the approach, for example, the Court has come to accept that Article 8 of the Convention (protecting the right to respect for one's private life) covers assisted suicide and abortion, a right to procreation and the right to legal recognition of gender transformation. To discover if there is sufficient consensus to support a novel Convention interpretation, the Court looks at comparative studies, international treaties and reports of international organizations and at EU law [*Mamatkulov and Askarov v.Turkey, ECtHR (GC) 12 November 2008, appl.no 34503/97*; *Opuz v. Turkey, ECtHR 9 June 2009, appl.no 33401/02*].

Clearly, this reliance on changes, developments and trends in national and international law leads to a dynamic and evolutive reading of the Convention.

ii. Practical and effective right and meta-teleological interpretation

The Court does not restrict the basis for its interpretation to evolutive interpretation and the need to attune its interpretation to the views and opinions expressed in the various European states. It also frequently stresses that the central aim and purpose of the Convention is to guarantee fundamental rights to individuals practically and effectively [*Airey v. Ireland,*

ECtHR 9 October 1979, appl.no.6289/73 and *Mamatkulov and Askarov v.Turkey, ECtHR 4 February 2005, appl. No. 46827/99* and *46951/99 p.73*]. it thereby frequently refers to the general objectives and fundamental principles underlying the Convention as a whole, such as notions of respect for human dignity, personal autonomy, democracy, the rule of law and pluralism [*O.De Schutter and F. Tulkens, 'Rights in Conflicts: the European Court of Human Rights as a Pragmatic Institution (Antwerp/Oxford/Portland, Intersentia 2008) p.283-318*]. The protection of those values is central to the Convention system as a whole, as is clear from its Preamble and from the Stature of the Council of Europe. Not surprisingly, therefore, the ECtHR strives to give a reading to the Convention rights that fit the underlying values of the Convention. The interpretative technique used in this regard has been termed 'meta-teleological interpretation'. In applying this technique, the Court does not so much refer to the concrete aim of certain provisions of the Convention (as would be the case with 'teleological' interpretation), but rather to the wider, general-purpose and objective of the Convention. The use of meta-teleological interpretation fits well with the general requirements for treaty interpretation that have been defined in Article 31 of the Vienna Convention on the Law of Treaties, which stipulates that 'a treaty shall be interpreted in good faith in their context and in the light of its object and purpose'. The meta-teleological interpretation gives shape to the notion of 'object and purpose', as the Court explicitly mentioned in *Soering v. United Kingdom:*
'In interpreting the Convention regard must be had to its special character as a treaty for the collective enforcement of human rights and fundamental freedoms… Thus, the object and purpose of the Convention as an instrument for the protection of individual human beings require that its provisions be interpreted and applied so as to make its safeguards practical and effective … In addition, any interpretation of the rights and freedoms guaranteed has to be consistent with *the general spirit of the Convention, an instrument designed to maintain and promote the ideals and values of a democratic society*' [*ECtHR 7 July 1989, appl.no. 14038/88*].
This consideration demonstrates that meta-teleological interpretation, consensus interpretation and evolutive interpretation are closely intertwined. In fact, they are different aspects of the same overall desire to do justice to the essential object of the Convention, i.e. to effectively protect individual fundamental rights and to guarantee a reasonable minimum level of protection of fundamental rights throughout the Council of Europe rights [*Janneke Gerards and Joseph Fleuren, Implementation of the European Convention on Human Rights and of the Judgments of the ECtHR in national case-law*, p.31].

iii. Autonomous interpretation

The Convention contains many notions and concepts that are also used in national constitutions and legislation, such as 'privacy', 'property', 'court' or 'marriage'. The precise legal meaning of such notions can differ in each individual legal system [*Macdonald et al. eds. The European System for the Protection of Human Rights (Dordrecht, Martinus Nijhoff 1993, p.65-71*]. For example, what constitutes 'property' in Denmark can be different from what constitutes property in Greece, and while disciplinary proceedings may be conducted before a court in one state, they may not form part of the regular judicial system in another. When interpreting or defining central Convention notions, the Court must choose between respecting the national meaning of such a notion and adopting a European definition. The Court has stressed that a European *autonomous* definition should usually prevail and this is understandable from the perspective that the Convention should guarantee an equal level of protection for all State Parties [*F. Matscher 'Methods of Interpretation of the Convention' (Martinus Niijhoff, Dordrecht 1993) p.63*].

In providing an autonomous interpretation of the Convention, the Court uses different methods of interpretation. In the latter situation, the Court searches for the largest common denomination with respect to the notion that has to be defined and bases its own Convention definition on the interpretation thus found. Meta-teleological interpretation may also help in arriving at an autonomous reading:
'The Court will usually try to give an autonomous definition that fits well with the general principles and notions underlying the Convention. Indeed, the Court has expressly stated that the integrity of the objectives of the Convention would be endangered if the Court were to take the national level of protection, or the national definition of certain notions, as a point of departure for its own case-law. [*Engel and Others v. the Netherlands, ECtHR 8 June 1976, appl.no.5100/71]*. In particular, there would then be a risk that states would try to evade supervision by the Court by giving a narrow definition to terms and notions that determine the Convention's applicability.'

iv. Comparative interpretation

One response to suggestions that the Court's judges are too active to make law rather than interpret it has been resort to a search to a search for a common European standard. The standards adopted for interpreting the Convention may sometimes differ from those applicable to other international instruments. This is because the interpretation of the Convention may legitimately be based on a common tradition of constitutional laws and a large measure of a legal tradition common to the countries of the Council of Europe [*A. Mowbray, 'The creativity of the European Court of Human Rights', 2005, p.71].* Thus, the Court and the Commission have relied as a guide to the scope of the rights guaranteed by the Convention, on comparative surveys of the laws of the Contracting Parties: the laws on the right to respect for family life, or on various aspects of criminal procedure, or the law relating to the recognition of the gender identity of transsexuals [*Jacobs, White, and Ovey 'The European Convention on Human Rights, sixth edition, Oxford University Press, p.74*].
Reference may be made to the general practice of the Contracting Parties in order to decide what is 'reasonable' or what is 'necessary' – two terms which occur frequently in the Convention – or what constitutes 'normal' civic obligations under Article4 [*Goodwin v United Kingdom, app.no.28957/95, 11 July 2002*]. There may be a conflict between two legitimate aims of interpretation: to avoid inconsistencies with other international instruments and to develop the protection of human rights in Europe based on common European law.
The yardstick of democratic standards runs through the Convention and has proved to be an important source of inspiration in delimiting the requirements of the Convention.
Certain key features of a democratic society emerge from a significant case-law in which the term has been relevant [*J. Merrills, 'The development of international law by the European Court of Human Rights (MUP, Manchester 1993*]. Democratic values require respect for the rule of law, which has been reflected in recognition by the court of a right of access to the courts [*Golder v United Kingdom, app.no. 4451/70, 21 February 2004*].
In one case, the Grand Chamber of the Court said:

> "As has been stated many times in the Court's judgments, not only is political democracy a fundamental feature of European pubic order but the Convention was designed to promote and maintain the ideals and values of a democratic society. Democracy, the Court has stressed, is the only political model contemplated in the Convention and the only compatible with it. By virtue of the wording of the second paragraph on Article 11, and likewise of Articles 8, 9 abd10 of the Convention, the only necessity capable of justifying an interference with any of the rights enshrined in those Articles is one that must claim to springform 'democracy society'…

Referring to the hallmarks of a 'democratic society', the Court has attached particular importance to pluralism, tolerance and broadmindedness. In that context, it has held that although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of the majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of minorities and avoids abuse of a dominant position…" [*Gorzelik and others v Poland, app.no. 44158/98, 17 February 2004*].

III. DIFFERENT STRATEGIC USES OF INTERPRETATION PRINCIPLES AND METHODS

Having in regard to the different roles and functions of the Convention the Court may have more approaches of interpretation principles and standards. Consensus interpretation and autonomous interpretation for example allow the Court to demonstrate its willingness to take national law as guidance when interpreting important notions of the Convention and thus to demonstrate its respect for what is accepted and acceptable at the national level [*P.G. Carozza, 'Propter Honoris Respectum: uses and misuses of comparative law in international human rights: some reflections on the jurisprudence of the European Court of Human Rights', 73 Notre Dame Law Review (1998) p.1217.*]. Consensus interpretation may also enable the Court to arrive at autonomous definitions and interpretations that can be relatively easily implemented in national law, since definitions may be chosen that lie close to what is already known and accepted at the national level. Furthermore, and perhaps more importantly, the ECtHR has traditionally been able to use consensus interpretation to respond to national concerns regarding the expansive protection of fundamental rights. In particular, it can refuse to give a new interpretation to the Convention due to the absence of sufficient support in the law of the Member states. In a few judgements, it has even refused to give an autonomous reading altogether, leaving the definition of rights issues to be decided by the states. In such cases, the need to respect diversity and national legal traditions trumps the desire to provide a high level of protection. Using the method in this manner the Court can thereby respect the principle of subsidiarity and make the national authorities responsible for compliance with the Convention. Thus, such methods of interpretation are for the Court an important instrument to negotiate between the 'pull' and 'push' factors and to give expression to the notion of 'shared responsibility' for compliance with the Convention [*Janneke Gerards and Joseph Fleuren, Implementation of the European Convention on Human Rights and of the Judgments of the ECtHR in national case-law*, p.41].

The same is true for meta-teleological interpretation. The Convention's general principles and objectives are very similar to principles that are mentioned in many national constitutional preambles or that find expression in national constitutional texts. By referring to such principles, the Court refers to a logical point of connection between the Convention and national constitutions, making it very clear that the Court respects such principles, rather than interferes with them [*M. KUMM, 'The jurisprudence of constitutional conflicts: constitutional supremacy in Europe before and after the Constitutional Treaty', 11 European Law Journal 2005*]. Secondly, there is a strong rhetorical force in the use of this method. If the Court closely connects any novel interpretation of Convention rights to the central values of the Convention, national authorities are almost obliged to agree with the reasonableness of such an interpretation. After all, since the national authorities have willingly and knowingly accepted the central aims and objectives by signing and ratifying the Convention, they logically also have to accept obligations and rights directly flowing from its central aims [*E. Pauno and S. Lindroos-Hovingeimo, 'Taking language seriously: an analysis of linguistic reasoning and its implications in EU law', 16 European law journal 2010, p.412*].

IV. CRITICISM

i. Meta – teleological interpretation and the risk of overreaching

Although there is great substantive and strategic value to the various principles and methods discussed above, the Court is frequently criticised for its use of those methods and the effect thereof. Indeed, there are some inherent risks for the Court in using precisely these methods. The pull towards practical and effective, evolutive protection of rights appears to be so great as to easily cause the Court to 'overreach' [*M. Burstein 'The will to enforce: An examination of the political constraints upon a regional court of human rights', Berkeley Journal of International Law 2006, p.423*]. Referring to the aims and objectives of the Convention and the need for effective protection, the ECtHR has imposed numerous positive obligations on the states to invest in the effective protection of fundamental rights, besides the negative obligations to refrain from interfering with these rights.

Some of the more controversial cases of the Court evidently result from the Court's reference to the underlying principles of the Convention.

ii. *The disadvantages of consensus interpretation*

Consensus interpretation may also be risky from the perspective of legitimating the Court's interpretation. This type of interpretation is especially vulnerable if it is used to support an interpretation where there is no clear convergence of national law or if there is no clearly discernible common denominator [*Janneke Gerards and Joseph Fleuren, Implementation of the European Convention on Human Rights and of the Judgments of the ECtHR in national case-law*, p.34].

Sometimes the use of the consensus method might be interpreted as forcing a majority opinion on a minority neglecting national particularities and national sovereignty and changing the central rules of international treaty law.

Complete or true consensus rarely exists, except perhaps at a very high level of generality. Hence, incomplete consensus or tendencies to convergence may suffice as a basis for common-ground interpretation, but there is then still uncertainty about the degree to which a predominant trend or uniform tendency really should be visible to warrant a new interpretation.

iii. *The problems of autonomous interpretation*

Autonomous determination of the meaning of central fundamental rights notions may create the perception that the Court is striving to empower itself, to the detriment of the states. In this respect, again, there is a risk of overreaching. Although autonomous interpretations are essential from the perspective of uniform protection of fundamental rights, such interpretations may result in an expansion of the Convention's scope and, accordingly, a stronger role for the Court to decide on the reasonableness of national decisions and measures affecting fundamental rights.

Moreover, autonomous definitions may cause legal problems, since 'European' definitions of certain notions may come to co-exist with national definitions of the same terms. As has been stressed in legal scholarship, this may lead to problems of fragmentation, inequality and legal uncertainty. Moreover, the European definition may start from e different conception of a certain notion that that used at the national level, which may make it difficult for states to understand and implement the European conception in a logical manner [*G. Letsas, 'A theory of interpretation of the European Convention on Human Rights', OUP, Oxford 2007, p.51*]. Again, this may not contribute to the willingness of national authorities to implement the Court's case-law in their own legislation, policies or case-law.

V. APPROACHES AND IDEOLOGIES

Fundamental differences of approach to the interpretation of the Convention had emerged in the 1975 *Golder* case [*S. Marks, 'The European Convention of Human Rights and it's Democratic Society', 1995*]. The Commission had argued that an important canon of interpretation of international treaties had only very limited application to the European Convention, namely consideration of the intention of the parties at the time of ratification. The Commission argued that the European Convention should not be interpreted in this subjective manner by reference to the intention of the parties, but should be interpreted objectively. The Commission argued:

"The overriding function of this Convention is to protect the rights of the individual and not lay down as between States mutual obligations which are to be restrictively interpreted having regard to the sovereignty of these States. On the contrary, the role of the Convention and the function of its interpretation is to make the protection of the individual effective" [*Golder v United Kingdom, Report of 1 June 1973, No 16*].

This approach to interpretation was adopted by the majority of the Court in its 9-3 decisions. The opposing view to interpretation of the Convention was championed by Sir Gerald Fitzmaurice throughout his term as a judge at the Court and an understanding of this approach helps to explain why he was so frequently in the minority in the Court. For him, the objective approach to interpretation was fundamentally flawed. Since the Convention made serious inroads into the domestic jurisdiction of States, a restrictive approach to its interpretation was required. He argued in his minority opinion in the *Golder* case that a cautious and conservative approach should be adopted to the interpretation of the Convention since extensive interpretation could impose on Contracting Parties obligations they had not intended to assume in ratifying the Convention. Therefore doubts should be resolved in favour of the State rather than the individual [*Jacobs, White, and Ovey 'The European Convention on Human Rights, sixth edition, Oxford University Press, p.75*].

The resolution of doubts in favour of the States has found its clearest exposition in the case-law of the Court in the concept of the 'margin of appreciation' which has been used extensively. But the term is used in more than one sense, furthermore, the Court is criticised for not always distinguishing between different meaning and contexts in which the term is used:

"I propose to analyse the margin of appreciation doctrine, as it figures in the case-law, differently by drawing a distinction between two different ways in which it has been used by the Court. The first one, which I shall call the *substantive* concept is to address the relationship between individual freedoms and collective goals. The second one, which I shall call *structural* concept, is to address the limits or intensity of review of the European Court of Human Rights in view of its status as an international tribunal. It amounts to the claim that the European Court should often *defer* to the judgment of national authorities on the basis that the ECHR is an *international* convention not a national bill of rights. The ideas of subsidiarity and state consensus are usually invoked to support the structural use of the margin of appreciation" [*G. Letsas, 'A theory of interpretation of the European Convention on Human Rights', OUP, Oxford 2007, p.80*].

This is a helpful analysis that enables us to appreciate the different contexts in which the notion operates. In its first sense, it has its greatest application when balancing the rights contained in the first paragraphs of Article 8 to 11 of the Convention against the permissible interferences which may be justified by resort to the limitations permitted by the second paragraphs of those provisions [*R. Macdonald, F. Matscher and H.Petzold 'The European System for the Protection of Human Rights', Dordrecht 1993, p.83*]. In the second sense, the easiest example is the approach of the Court to review of a Contracting Party's claim that there is a public

emergency threatening the life of the nation which warrants derogation from one or more provisions of the Convention.
Margins of appreciation are the outer limits of schemes of protection which are acceptable under the Convention. The Court will not interfere with actions which are within the margin of appreciation. In the *Brannigan* case [*Brannigan and McBride v United Kingdom, app.no.14553/89 and 14554/89, 26 May 1993*] the Court affirmed its earlier case-law in considering the validity of the UK's derogation under Article 15 excluding the application of Article 5(3) to the system of detention applicable under the prevention of terrorism legislation. The Court recognized that Contracting Parties are in a better position than the judges to decide both on the presence of an emergency threatening the life of the nation and on the nature and scope of the derogation necessary to avert it. It was, therefore, appropriate to leave 'a wide margin of appreciation… to the national authorities' [*Ireland v. UK, app.no.5310/71, 18 January 1978*]. However, even this wide margin of appreciation is subject to the supervision of the Convention organs, since it is for the Court to determine whether the derogation goes beyond the extent strictly required by the exigencies of the situation. It followed that:

"in exercising its supervision the Court must give appropriate weight to such relevant factors as the nature of the rights affected by the derogation, the circumstances leading to and the duration of the emergency situation" [*Brannigan and McBride v United Kingdom, app.no.14553/89 and 14554/89, 26 May 1993*].

VI. CONCLUDING REMARKS

Interpretation of the Convention builds on the rules of public international law on the interpretation of treaties and has remained broadly consistent with those principles. At the same time, the approach taken to interpretation has recognized that both the nature of the obligations contained in the Convention and the regional limitation on its application legitimately permit the giving of a particular meaning to words and phrases in the Convention. There would appear to be two core principles of interpretation that which seeks to affect the object and purpose of the Convention (the teleological approach), and that which seeks to give a practical and effective application in the light of present-day conditions (the evolutive approach).
The role of the Court is casuistic; deciding individual cases does not lend itself to broad statements of theory and the Court has never used practice statements or practice directions to set out its approach to interpretation. It has, accordingly, been left to commentators to synthesize from the case-law of the Court a set of principles which the Court uses in interpreting the Convention. Its overall approach can perhaps best be summarized as an evolutive approach based upon its understanding of the object and purpose of the Convention, but also reflective of its own role as an international human rights court conscious of its subsidiary role in the protection of human rights.

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