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Committee on Legal Affairs and Human Rights

Parliamentary scrutiny of standards of the European Convention on Human Rights

Minutes

of the hearing held in Paris on 16 November 2009

(Extract from document AS/Jur (2009) PV 08)

The Chairperson, Mr Christos Pourgourides (1st Vice-Chairperson), welcomed the experts: Lord Lester of Herne Hill, QC, member of the United Kingdom Joint Committee on Human Rights of both Chambers of Parliament, United Kingdom, and Mr Martin Kuijer, Senior Legal Adviser, Ministry of Justice of the Netherlands. They were accompanied, respectively, by Mr Hunt, Legal Adviser to the Joint Committee, and Mrs Egmond, Co-agent of the Netherlands Government before the European Court of Human Rights.

The Chairperson also referred to a background document distributed to the members of the Committee prior to the hearing: document AS/Jur/Inf (2009) 02, entitled "Parliamentary scrutiny of ECHR standards".

Mrs Bemelmans-Vidéc made a few introductory remarks, stressing the importance of the topic of the hearing, and thanked the experts for attending.

Lord Lester of Herne Hill described the origins of the Joint Committee on Human Rights (in 1998) of which he had been a member from the outset. He drew the members' attention to the document he had sent to them, which explained how the Joint Committee worked. One of the most significant signs of progress was that the Joint Committee could demand that competent ministries certify the compatibility of laws with the European Convention on Human Rights (ECHR). Nowadays, the ministries sent proper explanatory reports giving the grounds for their position. The Joint Committee prepared reports explaining why certain laws might not be compatible with the ECHR. Judgments of the European Court of Human Rights that had not yet been executed were treated in a similar way: the Joint Committee demanded - and obtained - explanations. The key to the success of the Joint Committee's work lay in its independence and its well-qualified and highly motivated staff (3 legal advisers). The Australian human rights commissioner had said that Australia was developing a similar type of mechanism, and the Joint Committee was also trying to persuade Ireland to set up a committee along these lines. Finally, the Joint Committee did not content itself with examining judgments against the United Kingdom but also looked at other judgments that might concern that country. Lord Lester of Herne Hill suggested that, in the context of examining the implementation of the Court's judgments, the Committee of Ministers of the Council of Europe might also consider whether or not national parliaments were involved in the procedure.

* Declassified by the Committee on 25 January 2010.

Mr Kuijer said that when the Strasbourg Court first began its work, parliamentarians had taken little interest. But once numerous laws had been amended on the basis of the Court's judgments, the parliamentarians developed an interest when they realised that the Court's judgments were potentially a powerful means of criticising the Government. The Government's explanatory reports accompanying draft laws now had to include a section on compatibility with the ECHR. In the Netherlands, examination of the compatibility of laws with the ECHR was carried out essentially at governmental level. The inclusion of a clause on the compatibility of a legislative draft with the ECHR was part and parcel of each bill. It was a highly effective means of reinforcing dialogue between Parliament and Government in this area, as were clauses on evaluation, which made it possible to review the functioning of a law after several years. An annual report on the implementation of the judgments of the Strasbourg Court was sent to both chambers of Parliament. The report also covered Court judgments against other States where the government thought that they might influence Dutch legislation ("*erga omnes de facto effect*"). It was currently being discussed as to whether to add other instruments such as a biennial national action plan or to set up a national institute of human rights that could advise the Government and Parliament.

Mr Hunt said that the effectiveness of the Joint Committee could be gauged by the growing amount of legislation that had been amended to ensure that they were compatible with the ECHR. Furthermore, its activities were increasingly reported in the media. Finally, some parliamentarians not previously having shown an interest were prompted to consider human rights issues. Mr Hunt thought that this was one of the Joint Committee's greatest achievements. The 42-day detention debate had been a high-quality debate, which proved that parliamentarians were now more familiar with human rights issues.

Mrs Egmond pointed out that the report sent to Parliament was drafted in the simplest possible terms, so that it could also be easily read by parliamentarians who were not law specialists.

The Chairperson opened the discussion.

The ensuing discussion involved **Mrs Err** (who wondered what kind of guarantees there were of the independence of the Joint Committee), **Mr Díaz Tejera** (who asked about the role of the Ombudsman in the United Kingdom and in the Netherlands and consideration of social and economic rights and also asked the experts what they thought of the idea of drafting an additional protocol to the ECHR on the right to a healthy environment) and **Mrs Bemelmans-Vidéc** (who stressed the difference between the British system of examining compatibility with the ECHR – a parliamentary one – and the Dutch system – governmental).

Lord Lester of Herne Hill said that the Joint Committee's independence hinged more on the integrity of certain individuals than on a system. He also pointed out that the Ombudsman dealt with questions linked to administrative matters but there was also a committee on equality and human rights. Where social and economic rights were concerned, the Labour Party was in favour of including them, whereas the Conservatives were against it. While parliamentary involvement was important in the area of human rights in the United Kingdom, the real expertise was within the government. He realised that many countries did not have the means to set up a mechanism as costly as the Joint Committee (resources required to handle the constant pressure of producing reports quickly). It was the dualistic nature of the British legal order that, unlike the monistic nature of Dutch law, allowed more progressive development of the powers of Parliament. He further stressed that the fact that the United Kingdom had no written constitution meant that it had neither the advantages nor the disadvantages of such a text.

Mr Kuijer said that the Ombudsman had an extremely important role in the Netherlands, but it did not entail analysing the compatibility of laws with the ECHR. Whereas the debate so far had focused on civil and political rights, a slight shift could now be observed towards more discussion on economic, social and cultural rights. The official stance of the Netherlands Government on a possible protocol on the right to a healthy environment was not favourable (as the Court had already developed case-law in this area through its interpretations of the provisions of the ECHR). He emphasised that the Parliament of the Netherlands was very active in the human rights field.

The Chairperson referred to his country's Constitution, which gave constitutional force to all the rights included in the ECHR. It was impossible, therefore, for the Cypriot Parliament to adopt laws that were incompatible with the ECHR as they would be unconstitutional. He asked the experts how many laws had been deemed incompatible with the Convention after being passed. **Lord Lester of Herne Hill** said that there was a list of decisions of incompatibility. The next annual report would provide the latest figures. **Mr Kuijer** did not have any statistics on this point. He took the opportunity to reiterate that the Netherlands Constitution placed the standards of the ECHR above those of the Constitution.

Mrs Türköne informed the members that she had sent a proposal to the Turkish Minister of Justice to set up a committee along the lines of the British Joint Committee within the Turkish Parliament. **Mr Pantiru** said that he had been elected Chair of the new sub-committee of the Romanian Parliament tasked with supervising the implementation of judgments of the European Court of Human Rights. For the time being, the sub-committee's work had not really got under way but he intended to move things forward.

As the committee members showed an interest in the functioning of the Joint Committee, **Mr Hunt** explained the committee's working procedures in greater detail. **Lord Lester of Herne Hill** pointed out that the Joint Committee thought that legal security and proportionality had to be guaranteed by the law itself (whereas the Government thought that it was for the judges to interpret the law in a manner that guaranteed those principles). He stressed the importance of this type of dialogue between Parliament and Government. The transparency of the Committee's work was assured since all correspondence with the Government was made public. **Mr Kuijer** praised the British system, which he saw as having the major merit of making parliamentarians realise just how important human rights were.

The head of secretariat asked the members of the Italian and Ukrainian delegations to outline the systems set up within their respective parliaments.

Mr Vitali said that supervision of the implementation of the Court's judgments fell within the specific remit of the Minister of Justice, under the coordination of the Presidency of the Council of Ministers. Italy was making efforts to remedy the slow pace of judicial procedures. He thought that Italy should also envisage setting up a specific committee along the lines of the British model. He pointed out that the Court's recent ruling against Italy with regard to crucifixes in classrooms would not be easy to implement since, as it was based on a concordat, the possibility of hanging crucifixes in classrooms had constitutional force.

Mr Holovaty informed the members that, since 2006, developments in Ukraine regarding the involvement of Parliament in the supervision of the implementation of the Court's judgments were none too positive. Following the memorandum of understanding given to Mr Pourgourides during his visit to Ukraine in the capacity of rapporteur on the implementation of judgments of the Court, no progress had been made.

The Chairperson thanked the experts and members for their participation.