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Productive Role of Object and Purpose in Interpretation of the European Convention on Human Rights

1. Introduction

In ancient times, Greek rhetoricians and Roman orators derived “what is not written” from “what is written” and used it in discovering intention of a promiser.¹ The implied content of a written text has been always used in interpretation, but not always under the name “object and purpose.” It seems that widespread usage of the expression “object and purpose” was generated by the Advisory Opinion of the International Court of Justice concerning *Reservations on the Genocide Convention* from 1951.² The expression is used in the general rule on interpretation, laid down in Article 31 (1) of the Vienna Convention on the Law of Treaties (the VCLT), which states: “A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.” The VCLT does not define “object and purpose,” but indicates that it is something that belongs to a treaty. The VCLT makes distinction between “object and purpose of a treaty” and “subject-matter” to which a treaty relates and indicates, thus, that subject-matter is something beyond a treaty. In 1998 two authors published a text under title “The ‘Object and Purpose’ of a Treaty: An Enigma?” After thoroughly exploration of practice and doctrine they stated: “With regret one must conclude at the end of the enquiry that the object and purpose of a treaty are indeed something of an enigma.”³

The European Court of Human Rights (the ECtHR or the Court) gave a few determinations of the object and purpose of the European Convention on Human Rights (the Convention). The Court has determined objects and/or purposes of articles and even paragraphs. This paper intends to cast some light to interpretative potentiality of object and purpose. It will be focused on the methods, used by the ECtHR for ascertaining object and

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- 1 Hugo Grotius, *De Jure Belli ac Pacis*, 1625. I used English translation published in *The Rights of War and Hugo Grotius on War and Peace*, The Right of War in Peace in three books, added notes by J. Barbeyrac, London, 1738, Sec. b. ch. XVI, para XX, 2, p. 363 Available at <http://www.archive.org/details/rightsofwarpeaceOogrot>.
- 2 Richard K. Gardiner, *Treaty Interpretation*, Oxford, 2008, p. 191.
- 3 Isabelle Buffard, Karl Zemanek, “The ‘Object and Purpose’ of a Treaty: An Enigma?,” *Austrian Review of International & European Law*, no. 3, 1998, 311–343, at 342. See, also, R. K. Gardiner, *op. cit.*, pp. 189–201, Bojan Milisavljević, Predmet i cilj ugovora u međunarodnom javnom pravu, *Pravni život*, br. 13, 2008, str. 623–643. David S. Jonas, Thomas N. Saunders, “The Object and Purpose of a Treaty: Three Interpretive Methods,” *Vanderbilt Journal of Transnational Law* vol. 43, no. 3, 2010, 577–580.

purpose and on interpretative functions of it. The paper discloses certain disagreements between the judges concerning the two issues. In spite of the disagreements, the usage of object and purpose in the practices of the ECtHR does not look too much enigmatic.

1.1 Ascertaining object and purpose of the ECHR

The ECtHR used the terms “object” and “purpose” as two separate expressions in first decades.⁴ Today, they are used as one expression.⁵ The new grammatical form has not remarkably affected the meaning of the expression nor methods of ascertaining of the object and purpose of the Convention. Sometimes, the Court has employed only “the purpose of the Convention.”⁶ The Court has used a few methods to determine the object and purpose of the Convention.

In the *Golder* case, the ECtHR refers to the preamble of the Convention to specify its object and purpose. The Court states:

... the preamble is generally very useful for the determination of the ‘object’ and ‘purpose’ of the instrument to be construed. In the present case, the most significant passage in the Preamble to the European Convention is the signatory Governments declaring that they are ‘resolved, as the Governments of European countries which are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law, to take the first steps for the collective enforcement of certain of the Rights stated in the Universal Declaration’ of 10 December 1948.⁷

It should be remarked that the Court stated: “In the present case, the most significant passage in the Preamble...is.” That may mean that in another case another passage in the preamble might be the most significant for ascertaining the object and purpose of the Convention. In other words, determination of object and purpose may depend on circumstances of the case. Really, we shall see later, that it may depend, but nevertheless the quoted passage reflects essence of the Convention. In line with this determination of the object and purpose, the Court speaks, also, about “the general spirit of the Convention, an instrument designed to maintain and promote the ideals and values of a democratic society.”⁸

Another method, used by the Court, for ascertaining the object and purpose of the Convention might be described as abstracting essence from a combination of the subject-matter of the Convention and the text of the Convention as a whole. The interactions between an individual and a State constitute the main subject-matter of the Convention. The social and legal content of these interactions is the protection of human beings. The Court has repeated so many times: “In determining whether or not a positive obligation

4 *Golder v. The United Kingdom* (app. no. 4451/70) Judgment, 21 February 1975, para 34. *Soering v. The United Kingdom* (app. no. 14038/88) Judgment, 07 July 1989, para 87.

5 *S.M. v. Croatia* (app. no. 60561/14) Judgment, 25 June 2020, para 275.

6 *Xhoxhaj v. Albania* (app. no. 15227/19) Judgment, 9 February 2021, para 326.

7 *Golder*, op. cit., para 34

8 *Kjeldsen, Busk Madsen and Pedersen v. Denmark* (app. no. 5095/71; 5920/72; 5926/72) Judgment, 7 December 1976, para 53.

exists, regard must be had to the fair balance that has to be struck between the general interest of the community and the interests of the individual, the search for which balance is inherent in the whole of the Convention.”⁹ The search for a fair balance is inherent in the Convention, but it is inherent also in the whole practice of protection of individuals. It might be said, thus, that it is also an element of the subject-matter of the Convention.

Another element of the subject-matter is the rule of law. Henkin finds the roots of the rule of law in *Magna Carta Libertatum* of 1215.¹⁰ Limitation of power of government has become a feature of common legal history of the contracting parties. In the above quoted the *Golder* judgment, the ECtHR continues: “It may also be accepted, as the Government have submitted, that the Preamble does not include the rule of law in the object and purpose of the Convention, but points to it as being one of the features of the common spiritual heritage of the member States of the Council of Europe.”¹¹ It might have been judicial kindness expressed to the Government, but the Court has treated the rule of law as an element of the object and purpose of the Convention. It found further evidence that the contracting parties accepted the rule of law in the Statute of the Council of Europe. Later, the Court will use the rule of law as “a concept inherent in all Articles of the Convention.”¹² The rule of law has been considered, thus, to be an element of the object and purpose of the Convention.

The Court has recalled in many cases that “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.”¹³ Here we find an open reference to the subject-matter – “the protection of individual human beings.” The quoted sentence explicates the principle of effectiveness, a general interpretative means, which is connected with object and purpose. The connectivity of effectiveness and the subject-matter in the version of the ECtHR has been used not just to secure that written text produces full effect, but, also, as we shall see later, for discovering an implied content of the text.

There are cases where the Court uses the object and purpose of the Convention without determining it. In many cases the ECtHR has repeated that an exclusive competence of a State over qualification of a matter as criminal one under Articles 6 and 7 or as civil one under Article 6 would not be compatible with the object and purpose of the Convention, without defining the object and purpose in these cases.¹⁴ That indicates, however, that the Court has considered its supervisory function over the respect for human rights to be an element of the object and purpose of the Convention.

9 *James and Others v. The United Kingdom* (app. no. 8793/79) Judgment, 21 February 1986, para 50. *Rees v. The United Kingdom* (app. no. 9532/81), Judgment, 17 October 1986, para 37.

10 L. Henkin, *The Age of Rights in Human Rights*, ed. Henkin G.L. Neuman, D.F. Orentlicher, D.W. Leebron, New York 1999, 11.

11 *Golder*, op. cit., para 34

12 *Khlaifia and others v. Italy* (app. no. 16483/12) Judgment, 15 December 2016, para 91.

13 *Soering*, op. cit., para 87.

14 *Pantolon v. Croatia* (app. no. 2953/14) Judgment, 19 November 2020, para 29.

2. Ascertaining object and purpose of particular provisions the ECHR

Article 31 (1) of the Vienna Convention refers only to the object and purpose of a treaty as an interpretative means. It has become general practice, however, that international judicial bodies are using object and purpose of particular articles and paragraphs as means of interpretation. The ECtHR participates in the practice. It has even adapted Article 31 (1) of the Vienna Convention saying: “Under that Convention, 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.”¹⁵ Instead “the light of the object and purpose of the treaty,” the Court used formulation “the light of the object and purpose of the provision.” That does not necessarily mean fragmentation of the Convention in the process of interpretation. The object and purpose of articles is seen by the Court as a particular expression of the overall object and purpose of the Convention. Frequently, the Court uses only one term “purpose” or “object” of an article.

The Court formulates object and purpose of an article or paragraph mainly by abstracting essence from its text. One of the main purposes of Article 3, which prohibits torture, inhuman and degrading treatment and punishment, is, according to the Court, “to protect ... a person’s dignity and physical integrity.”¹⁶ Or, the Court states that the object and purpose of Article 5 (1) relating to the right to liberty and security “is precisely to ensure that no one should be deprived of his liberty in an arbitrary fashion...”¹⁷ The object and purpose of Article 6 has been seen by the Court as “the protection of the rights of defence.”¹⁸ In another case the Court says that “the object and purpose of the Convention as pursued in Article 6 para. 1 (...) are, to some extent, discernible from the nature of the safeguards provided.”¹⁹ The Court meant on the nature of the safeguards provided by the Article.

The determination of object and/or purpose has usually remained unchanged in later cases. Other circumstances in later cases have required, however, sometimes a change. In the *Belgian Linguistic* case, the Court declares that the object of Article 8 “is essentially that of protecting the individual against arbitrary interference by the public authorities in his private family life.”²⁰ In the *Marckx* case, eleven years later, the Court repeats its formulation from the *Belgian Linguistic* case, but adds: “Nevertheless it does not merely compel the State to abstain from such interference: in addition to this primarily negative undertaking, there may be positive obligations inherent in an effective ‘respect’ for family life.”²¹ The Court distinguishes the term “respect” to reformulate the object of Article 8 in a way to include positive obligations. The reformulation of the object and purpose of Article 8 in the *Marckx* case was caused by circumstances of the case. The

15 *S.M. v. Croatia* (app. no. 60561/14) Judgment, 25 June 2020, para 274.

16 *Tyrer v. the United Kingdom* (app. no. 5856/72) Judgment, 25 April 1978, para 33.

17 *X v. the United Kingdom* (app. no. 7215/75) Judgment 5 November 1981, para 43.

18 *Adolf v. Austria* (app. no. 8269/78) judgment, 26 March 1982, para 30.

19 *Feldbrugge v. The Netherlands* (app. no. 8562/79) Judgment, 29 May 1986, para

20 *The Belgian Linguistic case* (app. no. 1474/62; 1677/62; 1691/62; 1769/63; 1994/63; 2126/64) Judgment 23 July 1968, para 7.

21 *Marckx v. Belgium* (app. no. 6833/74) Judgment 13 June 1979, para 31.

reformulated determination will remain in later cases, but it will be qualified by other means of interpretation.

The method of ascertaining object and purpose has become a matter of disagreement among judges in some cases. Judge Sir Gerald Fitzmaurice disagreed with the extension of the object and purpose of Article 8 in the *Marckx* case emphasizing importance of historical background of the Convention for determining object and purpose.²²

The abstracting essence from the text is a prevailing method of determination of object and purpose, but not exclusive one. In the *Marckx* case the Court relied on certain terms in the text and preparatory work to formulate the object of Article 1 of Protocol no. 1. It states:

By recognizing that everyone has the right to the peaceful enjoyment of his possessions, Article 1 (P1-1) is in substance guaranteeing the right of property. This is the clear impression left by the words ‘possessions’ and ‘use of property’ (in French: ‘biens’, ‘propriété’, ‘usage des biens’); the ‘travaux préparatoires’, for their part, confirm this unequivocally: the drafters continually spoke of ‘right of property’ or ‘right to property’ to describe the subject-matter of the successive drafts which were the forerunners of the present Article 1 (P1-1). Indeed, the right to dispose of one’s property constitutes a traditional and fundamental aspect of the right of property (...)²³

Judge Sir Gerald Fitzmaurice disagreed again. Having in view certain terminological confusion in English and French version of the Article, he expressed certain benevolence for finding that the right of property is the object of the Article, but he disagreed that the right includes the right of disposal of property referring to difference between legal system in that respect.²⁴ He stated:

The truth of the matter - as would be obvious to anyone not intent on this scope-extending process - is that the chief, if not the sole object of Article 1 of the Protocol (P1-1) was to prevent the arbitrary seizures, confiscations, expropriations, extortions, or other capricious interferences with peaceful possession that many governments are - or frequently have been - all too prone to resort to. To metamorphose it into a vehicle for the conveyance of rights that go far beyond the notion of the peaceful enjoyment of possessions, even if they are connected with property, is to inflate it altogether beyond its true proportions.²⁵

Sir Gerald Fitzmaurice raised crucial question – where are limits of interpretative function of object and purpose over which an interpreter encroaches judicial legislation. The substance of the question is relation between the text and object and purpose. He expressed a worry that the object and purpose of Article 1 of Protocol no. 1, as determined by the Court, inflates the text of the Article “beyond its true proportions”.

22 Dissenting Opinion of Judge Sir Gerald Fitzmaurice, para 7, *Marckx v. Belgium*.

23 *Marckx, op. cit.*, para 63.

24 Dissenting Opinion of Judge Sir Gerald Fitzmaurice, para 18, *Marckx v. Belgium*.

25 *Ibid.*, para 20.

3. Interpretative functions of object and purpose

It seems that there are two main interpretative functions. The object and purpose controls rightfulness of interpretation, arrived at by other means, such as ordinary meaning of terms and context. The object and purpose serves, also, as a substitute for missing text. The two functions are based on two reasonable assumptions. Since the most means of interpretation, including object and purpose are discovering the same element - common intention of the parties, it may be expected that they are leading to harmonic result. The meaning of a treaty should be construed in a way to be compatible with all of them and, consequently, with object and purpose. The ordinary meaning of terms and information emerging from context, object and purpose, subsequent agreements and practice or general principles should be in harmony. If the interpretation is not in accordance with object and purpose, something is wrong. In that sense object and purpose controls the rightfulness of interpretation.

Another assumption is that the parties cannot state by a text of a legislative treaty, as the European Convention on Human Rights is, all that they have intended. The provisions are general and they cannot contain all details nor foresee all future situations. Thus, what has been intended, or what might be presumed to have been intended, but not written text, may be found in object and purpose. The both functions have played stimulative roles in the practice of the ECtHR. Sometimes, the two functions cannot be clearly separated.

3.1 Object and purpose as a controller of correct interpretation

This function resulted in certain significant interpretations of the Convention. The concept of autonomous meanings has been established relying on this function. In the *Engel* case in 1976, the ECtHR finds that by discretion to “classify an offence as disciplinary instead criminal” the parties might avoid Articles 6 and 7 and that “might lead to results incompatible with the purpose and object of the Convention.”²⁶ Two years later in the *König* case, the Court states: “the Court has already acknowledged, implicitly, that the concept of ‘civil rights and obligations’ is autonomous... any other solution might lead to results incompatible with the object and purpose of the Convention.”²⁷ If qualification of a matter by the parties as administrative instead as criminal or civil were binding for the Court, that would enable the parties to avoid Articles 6 and 7 and that would really be incompatible with the object and purpose of the Convention.²⁸

In many other occasions, object and purpose was used to point at right interpretation. In an occasion the question was whether Article 5 (4) of the Convention covers Article 5 (1) (e). Paragraph 4 of the Article states: “Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.”

²⁶ *Engel and others v. The Netherlands* (app. no. 5100/71; 5101/71; 5102/71; 5354/72; 5370/72) Judgment, 8 June 1976, para 81.

²⁷ *König v. Germany* (app. no. 6232/73) Judgment, 28 June 1978, para 88.

²⁸ See on building autonomous concepts at George Letsas, *The Truth in Autonomous Concepts: How to Interpret the ECHR*, *European Journal of International Law*, vol. 15, no. 2, 2004, p. 279 – 305.

Paragraph 1 (e) reads:

Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law;

...

(e) the lawful detention ... of persons of unsound mind ...;

The question was whether lawfully detained person of unsound mind has the right to judicial review of lawfulness of the detention. The Court replied: "...it would be contrary to the object and purpose of Article 5 (...) to interpret paragraph 4 thereof (...), read in its context, as making this category of confinement immune from subsequent review of lawfulness merely provided that the initial decision issued from a court."²⁹ The object and purpose of Article 5 (1) is determined, as stated above, "to ensure that no one should be dispossessed of his liberty in an arbitrary fashion".

If a possibility of review of lawfulness of detention were not be available in reasonable intervals, the detention might become arbitrary and that would be contrary to the object and purpose of Article 5. In another case, the Court states that a restrictive interpretation of Article 6 (1) regarding "the fundamental principle of the impartiality of the courts - would not be consonant with the object and purpose of the provision..."³⁰

3.2 Object and purpose as a substitute for missing text

The disputed issue in the *Golder* case was whether Article 6 guaranties the right of access to a court. The text of Article 6 does not offer an answer. Looking at the common heritage of the contracting parties and the Statute of the Council of Europe, as stated above, the Court has identified the rule of law as an element of the object and purpose of the Convention. Noting that the rule of law would be hardly conceivable without the right of access to a court, the Court concludes that the right of access is inherent in the right guaranteed by Article 6.³¹ The Court states:

Taking all the preceding considerations together, it follows that the right of access constitutes an element which is inherent in the right stated by Article 6 para. 1 (...). This is not an extensive interpretation forcing new obligations on the Contracting States: it is based on the very terms of the first sentence of Article 6 para. 1 (...) read in its context and having regard to the object and purpose of the Convention, a lawmaking treaty (...), and to general principles of law.³²

The observation of the Court that this was not an extensive interpretation and imposing a new obligation on the parties was, probably, provoked by interpretative discourse between judges, that is by opposite opinions of Judges Zekia and Sir Gerald Fitzmaurice. The observation might be a reply to the statement of Sir Gerald Fitzmaurice:

29 *Winterwerp v. The Netherlands* (app. no. 6301/73) Judgment, 24 October 1979, para 55.

30 *De Cubber v. Belgium* (app. no. 9186/80) Judgment, 26 October 1984, para 30.

31 *Golder*, op. cit., para 35.

32 *Ibid.*, para 36.

...I am quite unable to agree with the Court on what has been the principle issue of law in these proceedings, - namely that of the applicability, and interpretation, of Article 6, paragraph 1 (...), of the Convention - the question of the alleged right of access to the courts – the point here being, not whether the Convention ought to provide for such a right, but whether it actually does. This is something that affects the whole question of what is legitimate by way of the interpretation of an international treaty while keeping within the confines of a genuinely interpretative process, and not trespassing on the area of what may border on judicial legislation.³³

As it is stated above, Sir Gerald Fitzmaurice raised important question about limits of interpretation, which may be relevant for establishment a proper interpretative function of object and purpose. The question will be addressed later.

Article 6 does not, also, explicate the right to participation in a trial, but the Court finds that existence of the right “is shown by the ‘object and purpose of the Article (...) taken as a whole’”.³⁴ Later, it has been strengthened by referring to paragraphs 6 (3) (c) and (d) which imply the presence of an accused in a trial.³⁵

The object and purpose has played a significant role in discovering positive obligations, first in the frame of Article 8 and later in other articles. It has been already mentioned that in the *Marckx* case the Court expanded the object and purpose of Article 8 to include positive obligations.³⁶ The expansion has brought positive obligations in the form of abstract potentiality, not as particularly defined obligations. In later cases, the Court clarified that “the notion of ‘respect’ is not clear-cut”³⁷ and that existence of positive obligations will depend on other factors such as the practices of the parties or a fair balance of interests. The Court has been looking at practices of the parties to ascertain whether European consensus has been constituted about existence of a positive obligation. Or, it has been weighing opposing interests to see whether a fair balance of interests requires a positive obligation.

The role of object and purpose regarding positive obligation has been transposed in other articles. Concerning Article 11 the Court states that “a purely negative conception would not be compatible with the object and purpose of Article 11 (...). Like Article 8 (...), Article 11 (...) sometimes requires positive measures to be taken, even in the sphere of relations between individuals, if need be...”³⁸ The Court finds positive obligations inherent also in other articles.³⁹

The object and purpose informs about standards of rights and freedoms. Having noted that the right to a fair hearing includes the right of the parties to proceedings to submit observations, the Court continues: “The purpose of the Convention being to guarantee not rights that are theoretical or illusory but rights that are practical and effective, this

33 Separate Opinion of Judge Sir Gerald Fitzmaurice, para 2, *Golder v. The United Kingdom*.

34 *Brozicek v. Italy* (app. no. 10964/84) Judgment, 19 December 1989, para 45.

35 *Jan-Ake Andersson v. Sweden* (app. no. 11274/84) Judgment, 29 October 1991, para 24.

36 *Marckx*, op. cit., para 31.

37 *Abdulaziz, Cabales and Balkandali v. The United Kingdom* (app. no. 9214/80; 9473/81; 9474/81) Judgment, 25 May 1985, para 67.

38 *Plattform “Ärzte für das Leben” v. Austria* (app. no. 10126/82) Judgment, 21 June 1988, para 32.

39 See, for example, *M.C. v. Bulgaria* (app. no. 39272/98) Judgment, 4 December 2003, para 153.

right can only be seen to be effective if the observations are actually ‘heard’, that is, duly considered by the domestic courts. In other words, the effect of Article 6 is, among others, to place the ‘tribunal’ under a duty to conduct a proper examination of the submissions, arguments and evidence adduced by the parties, without prejudice to its assessment of whether they are relevant.”⁴⁰

3.3 Limits: object and purpose and ordinary meaning

Recently, in February 2021 Judge Serghides states:

The principle of effectiveness which underlies all Convention provisions does not allow an interpretation which goes against the text of a particular Convention provision but, on the contrary, aims to give full effect to it; at the same time, it aims to manifest and fulfil the object and purpose of the Convention provision in question;...⁴¹

It might be said that the statement reflects general position of the ECtHR on the matter. The Court is not willing to interpret a provision contrary to the text. “Contrary to the text” should be understood strictly. That does not mean that the Court cannot read something what is implied in the text, something what is inherent to the text. If such exercise were be inappropriate, reference to object and purpose in Article 31 (1) of the Vienna Convention would be without any effect. The right of access to a court, the right to participate in a trial or the obligation of a court carefully to consider all submission of the parties are really inherent to a concept of fair trial. The fair trial is not conceivable without these rights. Thus, in spite of the fact that they are not inscribe in the text of Article 6, they are implied in the text. The positive obligations are also implied in the text. The Court has not, however, misused the concept to legislate particular positive obligation. It has based their existence on European consensus emerging from converging practices of the contracting parties or on the concept of fair balance.

Yet, there are gray areas. Having been mindful of the criminal-law connotation of the words in Article 5 (2), the Court “agrees with the Commission that they should be interpreted ‘autonomously’, in particular in accordance with the aim and purpose of Article 5 (...), which are to protect everyone from arbitrary deprivations of liberty. Thus the ‘arrest’ referred to in paragraph 2 of Article 5 (...) extends beyond the realm of criminal-law measures. Similarly, in using the words ‘any charge’ (...) in this provision, the intention of the drafters was not to lay down a condition for its applicability, but to indicate an eventuality of which it takes account.”⁴²

Article 5 (2) reads: “Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.” The question was whether paragraph 2 was applicable to a person of unsound mind. Individuals of unsound mind are not arrested, but deprived of liberty, and there is no any

⁴⁰ *Xhoxhaj, op. cit.*, para 326.

⁴¹ Partly Concurring Opinion of Judge Serghides, para 5, *X and other v. Bulgaria* (app. no. 22457/16) Judgement, 2 February 2021.

⁴² *Van der Leer v. the Netherlands* (app. no. 11509/85) Judgment, 21 February 1990, para 27.

charge against them. The text does not correspond to their situation. On the other hand, leaving people of unsound mind without information on the cause of deprivation of liberty would not be consonant with the spirit of Article 5 and overall spirit of the Convention. To overcome the problem the Court invokes the concept of autonomous meanings and asserts that the intention of the drafters was to indicate not all, but just one situation of applicability of the provision.

It happens sometimes that pieces of text of a treaty are disharmonic among themselves and with object and purpose. In such situations, the courts resolve the problem by a slightly violent interpretation as the ECtHR did in the above case. The Permanent Court of International Justice faced the problem at the beginning of its work. In May 1922 the Council of the League of Nations asked the Permanent Court whether the competence of the International Labour Organization covered conditions of labour in agriculture? The constitutive act of the Organization, laid down then in Part XIII of the Versailles Peace Treaty, was silent. The design, a term used then by the Permanent Court instead of object and purpose, was strongly in favor of positive answer. On the other hand, adjective “industrial” was used in many articles. In French version of the constitutive act the term “professional” was used in some articles instead “industrial”. The term “agricultural” was not used at all. The term “industrial” was employed in a significant provision in both linguistic versions. The provision related to the machinery for controlling implementation of the conventions which will be adopted by the Organization. The Permanent Court consulted dictionaries and learned that the term “industrial” covered also the meaning “agricultural.” Thus, it did not find contradiction between the employed terms and general design of the constitutive act. The Permanent Court, however, stated: “But, even if it were not so read the consequences would be that there would seem to be merely a defect in the constitution of the machinery in this particular instance, and not that the powers given to the international organization with regard to conditions of labour were to be similarly limited.”⁴³

Really, defects in text of treaties happen sometimes. Drafting treaty is a collective endeavor with participation of many representatives of different standpoints. The compromises are made to enable finalizing text. It was also the case with the European Convention on Human Rights. It is not a great wonder that certain inconsistencies may appear in the text. Having in view the character of the Convention, the ECtHR does not attribute decisive importance to preparatory work. It prefers discovering living intention of the parties from their practices in the application of the Convention.

4. Conclusions

The ECtHR referred to the preamble and used the method of abstracting essence from the whole text of the Convention and general practice of human rights protection to ascertain the object and purpose of the Convention. All that is inherent to the whole text might be considered as to belong to object and purpose. The rule of law, a fair balance

⁴³ *Competences of the International Labour Organization concerning the Conditions of Labour in Agriculture*, 1922 PCIJ Series B, No 2. p. 37.

of interests or “the ideals and values of a democratic society” may be considered to be components of the object and purpose of the Convention. The Court determined object and/or purpose of particular articles and paragraphs by abstracting essence from their text.

There are two main interpretative functions: controlling interpretation and substituting missing text. The interpretative functions of object and purpose are based on two reasonable assumptions. Since authentic means of interpretation are designed to discover the same thing – intention of the parties – it is reasonable to expect that they will lead to a harmonic result. The object and purpose as essence or spirit of a treaty controls harmony – all interpretation should be in accordance with object and purpose. Another assumption is that the contracting parties of a legislative treaty, such as the European Convention on Human Rights, are not able to inscribe in the text all that they have intended. Thus, that what is implied in a text or inherent to a text is very much relevant.

Using implied content does not mean an inappropriate expanding a text. Being essence of a text, it could not expect that object and purpose negate or go against the text. Adding new unwritten content to the text should not be seen as inappropriate. Otherwise, interpretative potentiality of object and purpose would be terribly crippled.

The object and purpose of the Convention as well as object and purposes of articles have proved very productive in the interpretative practice of the ECtHR. The rule of law and the fair balance of interest are playing significant roles in determination rights and freedoms, guaranteed by the Convention. The concept of “autonomous meanings” has its birthplace in the object and purpose of the Convention. Many unwritten rights, such as the right of access to a court, the right of a party to participate in a trial or the right of a party that its submissions, arguments and evidence are examined by the court have their origin in object and purpose of the particular articles.