



Explanatory Report to Protocol No. 3 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending Articles 29, 30 and 34 of the Convention

Strasbourg, 6.V.1963

I. Protocol No. 3 to the European Convention for the Protection of Human Rights and Fundamental Freedoms was prepared within the framework of the Council of Europe by the Committee of Experts on Human Rights. It was opened for signature on 6 May 1963.

II. This document contains the text of the explanatory report and of the commentary of the Committee of Experts on Human Rights, which publication was authorised by the Committee of Ministers at the 139th Meeting of the Ministers' Deputies in March, 1965.

General considerations

1. At their 10th Meeting, from 3rd to 8th July, 1961, the Ministers' Deputies decided to transmit to the Committee of Experts the following four proposals which had been presented to them by the European Commission of Human Rights:

(a) Deletion of the provisions of Articles 29 and 30 of the Convention stipulating that the Commission's functions of examination and conciliation shall be performed by a Sub-Commission of seven members;

(b) Competence for the Commission, under certain conditions, to terminate proceedings instituted under Article 25, when members are unanimously of the opinion that the Application declared admissible does not disclose any violation of the Convention;

(c) Legal aid for individuals in the case of an Application lodged in conformity with Article 25;

(d) Measures to be taken in the case of failure to appear or perjury on the part of witnesses or experts before the European Commission of Human Rights.

2. The Committee of Experts examined these proposals during meetings held at Strasbourg from 1st to 7th June and 22nd to 27th October, 1962, under the Chairmanship of Mr Ugo Calderera (Italian Governmental Expert). During the first of these meetings MM. Petren, Eustathiades and Faber, respectively the President, Vice-President and a member of the Commission, explained to the Committee of Experts the reasons which had led the Commission to put forward the proposals. Mr. Petren gave the Committee further explanations at the second of these meetings.

3. At its meeting in October, 1962, the Committee of Experts drafted the present report.

4. This report deals only with the first two of the Commission's proposals.

Commentary

1. The object of this Protocol is to modify in two particulars the procedure of the European Commission of Human Rights.

Abolition of Sub-commissions

2. First, its aim is to abolish the Commission's obligation to carry out the functions laid down in Article 28 by means of a Sub-commission.

3. On this point, the Committee of Experts accepts the arguments put forward by the Commission in its comments on its first proposal.

4. Abolition of the system of Sub-Commissions involves three amendments to the Convention:

a) deletion of Article 29 ⁽¹⁾ – (Article 1 of the draft Protocol) ;

b) in Article 30, replacement of the word "Sub-commission" by the word "Commission" (Article 2 of the draft Protocol);

c) in Article 34, deletion of the phrase: "the Sub-Commission shall take its decision by a majority of its members" (Article 3, paragraph 2 of the draft Protocol).

Competence of the Commission to reject an individual application after an initial decision declaring the application admissible

5. The second object of the Protocol is to confer upon the Commission the power to reject an individual application when, after accepting it, it finds in the course of examination that one of the grounds for non-acceptance laid down in Article 27 has been established.

6. The majority of the experts did not feel that they could adopt the Commission's second proposal as it stood.

According to that proposal, the Commission would be granted the power to terminate proceedings "where, after accepting a petition submitted under Article 25", the Commission ... "considers unanimously that the facts as ascertained by it in accordance with Article 28, paragraph (a), do not disclose a breach by the State concerned of its obligations under the Convention ...". In such case "the Commission shall then draw up a report which shall be sent to the Parties, to the Committee of Ministers and to the Secretary General of the Council of Europe for publication. This report shall be confined to a brief statement of the facts and of the Commission's decision".

The majority of the experts considered that, if adopted, such proposal could result in confusion between the functions of the Commission, on the one hand, and the functions of the Committee of Ministers and the Court on the other.

The Commission has the functions of pronouncing on admissibility (Article 27), ascertaining the facts (Article 28 (a)), attempting to secure a friendly settlement (Article 28 (b)) and stating its opinion as to whether the facts found disclose a breach of the Convention (Article 31).

(1) The new Article 29 is discussed later in paragraphs 7 to 10 of this commentary.

Only the Committee of Ministers and the Court, however, can render a binding decision on the last-mentioned question (Articles 32, 50 and 53).

The proposal of the Commission would be tantamount to granting the latter body also the judicial power of rendering a binding decision as to whether the facts do or do not disclose a breach of the Convention.

The majority of the experts thought that such an interpretation was not desirable.

7. The Committee accordingly sought to state precisely in what cases the Commission, would have the power to terminate proceedings without on that account affecting the balance of the functional relations between the various organs envisaged by the Convention.

The solution proposed by the Committee conforms to this conception.

The Commission's present functions include, pursuant to Article 27, the right to pronounce on the admissibility of applications:

– The Commission shall not deal with any petition submitted under Article 25 which :

a) is anonymous; or;

b) is substantially the same as a matter which has already been examined by the Commission or has already been submitted to another procedure of international investigation or settlement and if it contains no relevant new information." (Article 27, paragraph (1)).

– The Commission shall consider inadmissible any petition submitted under Article 25 which it considers incompatible with the provisions of the present Convention, manifestly ill-founded, or an abuse of the right of petition. (Article 27, paragraph (2)).

– The Commission shall reject any petition referred to it which it considers inadmissible under Article 26." (Article 27, paragraph (3)).

In accordance with Article 28 (a) the Commission, if it accepts the application, has to ascertain the facts. To that end, it undertakes an examination of the application together with the representatives of the parties and, if need be, an investigation.

If, when carrying out the duties set out in Article 28 (a) the Commission finds that there exists a ground for non-acceptance, as laid down in Article 27, it cannot in the present state of affairs go back upon its initial decision of admissibility. The procedure set out in Article 31 must be followed; the Committee of Ministers or the Court will be seized of the case.

The object of the present draft Protocol is to give the Commission power to halt, in the circumstances set out above, the procedural machinery. It thus meets one of the principal aims which the Commission had in view in making its second proposal.

8. One expert, while agreeing with the conclusions of the Committee, took the view that the Committee's standpoint should be explained in the following way:

"The Committee considered that the essential object of the Human Rights Commission's proposal (b) was merely to give flexibility to a power already possessed by the Commission under Article 27, paragraph (2), of the Convention, whereby a petition may be declared inadmissible even though not ruled out under Article 26 or Article 27, paragraph (1), when it is nonetheless incompatible with the provisions of the Convention, manifestly ill-founded, or an abuse of the right of petition. The purpose of the change requested is to enable the Commission to exercise this power

of rejection even when it has already begun to examine a petition in respect of the facts or the law. This would happen when the Commission, in the course of the examination, came to the unanimous conclusion that the petition, even though accepted, proved manifestly ill-founded or an abuse of the right of petition. It was with this in mind that the Committee thought it should link up the new Article 29 closely with Article 27, paragraph (2), thus fitting the power conferred on the Commission by the new Article more firmly into the scheme established by the Convention. That power is really none other than the power conferred by Article 27, paragraph (2), but exercisable in future even during the examination of a petition."

9. In cases where the Commission avails itself of the power given by this draft Protocol, decisions to reject the application must be taken unanimously by the members present and voting.

Such decisions shall be communicated to the parties.

10. The granting of this power involves two amendments:

a) the insertion in the Convention of a provision – new Article 29 – ⁽¹⁾ containing this power (Article 1 of the draft Protocol);

b) at the beginning of Article 34 the insertion of the words "subject to the provisions of Article 29" (Article 3, paragraph (1) of the draft Protocol).

Final clauses

11. The wording of the final clauses is based on the model text adopted by the Ministers' Deputies at their 113th Meeting.

(1) As to the deletion of the present Article 29, see above at paragraphs 2 to 4 of this commentary.