



## **Explanatory Report to Protocol No. 10 to the Convention for the Protection of Human Rights and Fundamental Freedoms**

Strasbourg, 25.III.1992

---

I. Protocol No. 10 to the Convention for the Protection of Human Rights and Fundamental Freedoms, drawn up within the Council of Europe by a committee of governmental experts under the authority of the Steering Committee for Human Rights, was opened for signature by the member States of the Council of Europe on 25 March 1992.

II. The text of the explanatory report prepared by the committee of experts and transmitted to the Committee of Ministers of the Council of Europe does not constitute an instrument providing an authoritative interpretation of the text of the Protocol although it may facilitate the understanding of the Protocol's provisions.

### **Reduction of the two-thirds majority provided for in Article 32 of the European Convention on Human Rights**

1. The idea of reducing the majority provided for in Article 32, paragraph 1, of the Convention was first brought up before an intergovernmental body at the 8th meeting of the Committee of Experts for the Improvement of Procedures for the Protection of Human Rights (DH-PR) in July 1982. During discussions several experts drew attention to the possibility of reducing the two-thirds majority provided for in Article 32 to a simple majority. The DH-PR Committee subsequently included this question in a list of measures for future discussion.

2. Subsequently, at the First European Ministerial Conference on Human Rights (Vienna, 1985), the Swiss delegation suggested that the two-thirds majority rule in Article 32 be replaced by a simple majority rule: "As far as the Committee of Ministers is concerned, ways ought to be found of facilitating its decisions under Article 32 of the Convention. In particular, the present requirement of a two-thirds majority might be replaced by a simple majority rule ... " (MDH (85) 1).

3. This subject was thereupon placed on the agenda of the DH-PR Committee at its 20th and 23rd meetings (December 1986 and December 1987) and discussed at its 25th, 26th and 27th meetings (September 1988, April and November 1989, respectively).

4. At the 27th meeting of the DH-PR Committee, held in November 1989, a substantial majority of experts came to the conclusion that the majority of two-thirds of members entitled to sit be reduced to a simple majority of members; entitled to sit. The committee thereupon decided to propose that the words "of two-thirds" (in French *des deux tiers*) be deleted from paragraph 1 of Article 32 of the Convention, adding that this would necessitate an amendment of the Convention. The Steering Committee for Human Rights (CIDDH) approved this proposal at its 28th meeting in June 1990.

At their 451<sup>st</sup> meeting (January 1991) the Ministers' Deputies instructed the CDDH to prepare an amending Protocol to the European Convention on Human Rights.

5. The final text of the draft Protocol was prepared by the DH-PR in September 1991, approved by the CDDH in October 1991 and submitted to the Committee of Ministers, which adopted the text at the 469<sup>th</sup> meeting of the Ministers' Deputies held from 7 to 13 January 1992. The text was opened for signature by member States of the Council of Europe signatories to the European Convention on 25 March 1992 at the Committee of Ministers' 472<sup>nd</sup> Session held in Strasbourg.

6. This amendment to the Convention is a logical development of the Convention's system of control. Upon the entry into force of this Protocol all three control organs – that is, the European Commission of Human Rights, the European Court of Human Rights and the Committee of Ministers of the Council of Europe when undertaking its quasi-judicial functions under Article 32 of the Convention – will take decisions by means of a simple majority.

7. In addition, although the proposed reduction of the majority envisaged in Article 32 of the Convention would not solve the problem of "non-decisions", that is, of the conclusion to be drawn in the few cases of failure to reach the majority of members entitled to sit, the chances of this occurring in the future might be reduced by the present amendment.