



## **Explanatory Report to the European Agreement relating to persons participating in proceedings of the European Court of Human Rights**

Strasbourg, 5.III.1996

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### **Introduction**

1. With the adoption by the Committee of Ministers on 20 April 1994, and subsequent signature by all member States of the Council of Europe, of Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "the Convention" <sup>(1)</sup>), the Committee of Ministers authorised, in January and September 1995, the amendment and subsequently the replacement of the European Agreement relating to persons participating in proceedings of the European Commission and Court of Human Rights, signed at London on 6 May 1969 (hereinafter referred to as "the 1969 Agreement").

2. It was considered more appropriate to replace rather than amend the 1969 Agreement in that Protocol No. 11 to the Convention restructures fundamentally the Convention's control machinery, especially by replacing the European Commission and Court of Human Rights with a new permanent Court. The 1969 Agreement remains in force and applicable to proceedings of the Commission and the Court under the present system. The new Agreement applies exclusively to proceedings before the Court as established by Protocol No. 11 to the Convention.

3. The present Agreement repeats the text of the 1969 Agreement with the alterations necessitated by the deletion of all references to the Commission as well as obsolete provisions of the former text of the Convention (see, in this connection, the *travaux préparatoires* of the 1969 Agreement, document H (69) 15). In addition, a few grammatical corrections have been made in the French version of the new text.

4. The new text was prepared between the months of March and September 1995 by the Committee of Experts for the Improvement of Procedures for the Protection of Human Rights (DH-PR), a subordinate body of the Steering Committee for Human Rights (CDDH).

5. This draft agreement prepared by the DH-PR and subsequently finalised by the CDDH – after due consultation with the Presidents of the European Commission and Court of Human Rights – was submitted to the Committee of Ministers, which adopted the text at the 556th meeting of the Ministers' Deputies on 9 February 1996. It was opened for signature by member states of the Council of Europe on 5 March 1996.

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(1) Unless otherwise stated, article references are to the articles of the Convention as amended by Protocol No. 11.

## **Commentary on the provisions of the Agreement**

### **Article 1**

6. The text of Article 1, paragraph 1, is a simplified and shortened version of Article 1, paragraph 1, of the 1969 Agreement; it applies to Articles 33 and 34 of the Convention. It is drafted in such a way as to ensure, *inter alia*, that the present Agreement applies to "third-party interventions" under Article 36 of the Convention as well as to any persons taking part in proceedings by virtue of this provision.

7. Paragraph 2 of Article 1 is based on that of the same provision in the 1969 Agreement, taking due account of changes made to the Convention by Protocol No. 11. This paragraph encompasses the work of judges who carry out their duties under the terms of the Convention or of the rules of the Court, as the case may be. Complaints include both inter-state cases and individual applications.

8. Whereas paragraph 3 of Article 1 of the 1969 Agreement related to the former Article 32 of the Convention (cases for decision by the Committee of Ministers), in the present text of paragraph 3 of Article 1 the words "Article 32 of" are deleted. Although the Committee of Ministers has no judicial or quasi-judicial role to play under any of the proceedings established by Protocol No. 11 to the Convention, reference to the Committee of Ministers remains useful in case any party is requested to take part in proceedings under Article 46 of the Convention.

### **Articles 2 to 6**

9. The text of Articles 2 to 6 is virtually identical to that of Articles 2 to 6 of the 1969 Agreement. Reference to the Commission is deleted and replaced where necessary. As concerns correspondence with detained persons, the text of Article 3, paragraph 2.a, has been altered so as to take into account the judgment of the European Court of Human Rights in the Campbell case, judgment of 25 March 1992, Series A, volume 233, especially paragraphs 62 and 63.

Also, the text of Article 6 mentions the protocols to the Convention; this addition reflects developments after the adoption of the Convention in 1950. Obviously, the Agreement will extend only to protocols which States have ratified.

### **Articles 7 to 11**

10. These Articles are based on similar provisions to those in the 1969 Agreement (Articles 7 to 11) and contain final clauses which are in conformity with the usual final clauses.

The text of Article 9, which relates to territories for whose international relations a State is responsible, has been somewhat modified in order for it to correspond more closely to similar provisions in the Convention and its protocols.

This Agreement will enter into force only after ten member States of the Council of Europe have expressed their consent to be bound by it or on the date of entry into force of Protocol No. 11 to the Convention, whichever is the later.