

Protocol No. 8 to the Convention for the Protection of Human Rights and Fundamental Freedoms (Vienna, 19 March 1985)

Caption: Open for signature in Vienna on 19 March 1985 by the members of the Council of Europe that are signatories of the Convention for the Protection of Human Rights and Fundamental Freedoms, the Protocol No. 8 to the Convention entered into force on 1 January 1990.

Source: Protocol No. 8 to the Convention for the Protection of Human Rights and Fundamental Freedoms (Vienna, 19.III.1985). [ON-LINE]. [Strasbourg]: Council of Europe, Treaty Office, [10.09.2004]. European Treaty Series (ETS) - No. 118. Available on <http://conventions.coe.int/Treaty/en/Treaties/Word/118.doc>.

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Protocol No. 8 to the Convention for the Protection of Human Rights and Fundamental Freedoms (Vienna, 19 March 1985)

[The original text of the Convention had been amended according to the text of Protocol No. 8 (CETS No. 118) which entered into force on 1 January 1990. All provisions which had been amended or added by this Protocol are replaced by Protocol No. 11 (ETS No. 155), as from the date of its entry into force, on 1 November 1998.]

The member States of the Council of Europe, signatories to this Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention"),

Considering that it is desirable to amend certain provisions of the Convention with a view to improving and in particular to expediting the procedure of the European Commission of Human Rights;

Considering that it is also advisable to amend certain provisions of the Convention concerning the procedure of the European Court of Human Rights,

Have agreed as follows:

Article 1

The existing text of Article 20 of the Convention shall become paragraph 1 of that article and shall be supplemented by the following four paragraphs:

"2 The Commission shall sit in plenary session. It may, however, set up Chambers, each composed of at least seven members. The Chambers may examine petitions submitted under Article 25 of this Convention which can be dealt with on the basis of established case law or which raise no serious question affecting the interpretation or application of the Convention. Subject to this restriction and to the provisions of paragraph 5 of this article, the Chambers shall exercise all the powers conferred on the Commission by the Convention.

The member of the Commission elected in respect of a High Contracting Party against which a petition has been lodged shall have the right to sit on a Chamber to which that petition has been referred.

3 The Commission may set up committees, each composed of at least three members, with the power, exercisable by a unanimous vote, to declare inadmissible or strike from its list of cases a petition submitted under Article 25, when such a decision can be taken without further examination.

4 A Chamber or committee may at any time relinquish jurisdiction in favour of the plenary Commission, which may also order the transfer to it of any petition referred to a Chamber or committee.

5 Only the plenary Commission can exercise the following powers:

- a the examination of applications submitted under Article 24;
- b the bringing of a case before the Court in accordance with Article 48.a;
- c the drawing up of rules of procedure in accordance with Article 36."

Article 2

Article 21 of the Convention shall be supplemented by the following third paragraph:

"3 The candidates shall be of high moral character and must either possess the qualifications required for appointment to high judicial office or be persons of recognised competence in national or international law."

Article 3

Article 23 of the Convention shall be supplemented by the following sentence:

"During their term of office they shall not hold any position which is incompatible with their independence and impartiality as members of the Commission or the demands of this office."

Article 4

The text, with modifications, of Article 28 of the Convention shall become paragraph 1 of that article and the text, with modifications, of Article 30 shall become paragraph 2. The new text of Article 28 shall read as follows:

"Article 28

1 In the event of the Commission accepting a petition referred to it:

- a it shall, with a view to ascertaining the facts, undertake together with the representatives of the parties an examination of the petition and, if need be, an investigation, for the effective conduct of which the States concerned shall furnish all necessary facilities, after an exchange of views with the Commission;
- b it shall at the same time place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for human rights as defined in this Convention;

2 If the Commission succeeds in effecting a friendly settlement, it shall draw up a report which shall be sent to the States concerned, 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 solution reached."

Article 5

In the first paragraph of Article 29 of the Convention, the word "unanimously" shall be replaced by the words "by a majority of two-thirds of its members".

Article 6

The following provision shall be inserted in the Convention:

"Article 30

1 The Commission may at any stage of the proceedings decide to strike a petition out of its list of cases where the circumstances lead to the conclusion that:

- a the applicant does not intend to pursue his petition, or
- b the matter has been resolved, or
- c for any other reason established by the Commission, it is no longer justified to continue the examination of the petition.

However, the Commission shall continue the examination of a petition if respect for human rights as defined in this Convention so requires.

2 If the Commission decides to strike a petition out of its list after having accepted it, it shall draw up a report which shall contain a statement of the facts and the decision striking out the petition together with the

reasons therefor. The report shall be transmitted to the parties, as well as to the Committee of Ministers for information. The Commission may publish it.

3 The Commission may decide to restore a petition to its list of cases if it considers that the circumstances justify such a course."

Article 7

In Article 31 of the Convention, paragraph 1 shall read as follows:

"1 If the examination of a petition has not been completed in accordance with Article 28 (paragraph 2), 29 or 30, the Commission shall draw up a report on the facts and state its opinion as to whether the facts found disclose a breach by the State concerned of its obligations under the Convention. The individual opinions of members of the Commission on this point may be stated in the report."

Article 8

Article 34 of the Convention shall read as follows:

"Subject to the provisions of articles 20 (paragraph 3) and 29, the Commission shall take its decision by a majority of the members present and voting."

Article 9

Article 40 of the Convention shall be supplemented by the following seventh paragraph:

"7 The members of the Court shall sit on the Court in their individual capacity. During their term of office they shall not hold any position which is incompatible with their independence and impartiality as members of the Court or the demands of this office."

Article 10

Article 41 of the Convention shall read as follows:

"The Court shall elect its President and one or two Vice-Presidents for a period of three years. They may be re-elected."

Article 11

In the first sentence of Article 43 of the Convention, the word "seven" shall be replaced by the word "nine".

Article 12

1 This Protocol shall be open for signature by member States of the Council of Europe signatories to the Convention, which may express their consent to be bound by:

- a signature without reservation as to ratification, acceptance or approval, or
- b signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.

2 Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 13

This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which all the Parties to the Convention have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 12.

Article 14

The Secretary General of the Council of Europe shall notify the member States of the Council of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance or approval;
- c the date of entry into force of this Protocol in accordance with Article 13;
- d any other act, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Vienna, this 19th day of March 1985, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.