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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

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Draft Convention for the Protection of Human Rights and Fundamental Freedoms

Conclusions[1]
Parliamentary Assembly

1. Recommendation to the Committee of Ministers, adopted 25th August 1950, at the conclusion of the Debate on the Report from the Committee on Legal and Administrative Questions

The Consultative Assembly of the Council of Europe having been acquainted by the Committee of Ministers with a draft Proposal for the safeguarding of Human Rights and Fundamental Freedoms, which has been drawn up with due regard to the draft submitted by the Consultative Assembly to the Committee of Ministers, expresses a favourable opinion of the proposed draft; but strongly urges the Committee of Ministers to complete or modify the text as drawn up in the following manner :

PREAMBLE

Whereas the Members of the General Assembly of the United Nations have proclaimed the Universal Declaration of Human Rights approved by the General Assembly on 10th December, 1948 :

And whereas the Declaration was proclaimed to the end, among others, that every organ of society should by progressive measures, national and international, strive to secure the universal and effective recognition and observance of the Rights therein declared, both among the peoples of the Member States themselves and among the peoples of territories under their jurisdiction:

And whereas the High Contracting Parties are the Governments of European Countries, like-minded and having a common heritage of political traditions, ideals, freedom and the rule of law, and accordingly are in a position to take a first step towards the collective enforcement of certain of the Rights stated in the Universal Declaration and to re-state them in a form suitable for that purpose :

And whereas the aim of the Council of Europe if the achievement of greater unity between its Members, who are the High Contracting Parties, and one of the methods by which that aim is to be pursued is by agreement and common action in legal and administrative matters and in the maintenance and further realisation of Human Rights and Fundamental Freedoms;

Now, therefore, the High Contracting Parties, re-affirming their profound belief in those Fundamental Freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of Human Rights upon which they depend.

Declare and agree as follows :

ARTICLE 1

1. See Doc. 93, Report.

The High Contracting Parties shall secure to each person within their jurisdiction the rights and freedoms defined in Section I of this Convention.

SECTION I

ARTICLE 2

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally, save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary :

a. in defence of any person from unlawful violence;

b. in order to effect a lawful arrest or to prevent the escape from lawful custody;

c. in action lawfully for the purpose of quelling a riot or insurrection.

ARTICLE 3

No one shall he subjected to torture or to inhuman or degrading treatment or punishment.

ARTICLE 4

1. No one shall be held in slavery or servitude.

2. No one shall be required to perform forced or compulsory labour.

3. For the purpose of this Article, the term " forced or compulsory labour " shall not include :

a. any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;

b. any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service ;

c. any service exacted in case of an emergency or calamity threatening the life or well-being of the community;

d. any work or service which forms part of normal civic obligations.

ARTICLE 5

1. 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 :

a. the lawful detention of a person after conviction by a competent court;

b. the lawful arrest or detention of a person for non-compliance with the lawful order of a court, or in order to secure the fulfilment of any obligation prescribed by law;

c. the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or which is reasonably considered to be necessary to prevent his committing an offence or fleeing after having done so ;

d. the detention of minors by lawful order for the purpose of educational supervision or their lawful detention for the purpose of bringing them before the competent legal authority;

e. the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholic or drug addicts or vagrants;

f. the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom deportation or extradition proceedings are pending.

2. 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.

3. Everyone arrested or detained in accordance with the provisions of para. 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. 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.

5. Everyone who has been victim of arrest or deprivation of liberty in contravention of the preceding provisions shall heve an enforceable right to compensation.

ARTICLE 6

1. In the determination of any criminal charge against him or of his rights and obligations in a suit at law, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgement shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the parties to proceedings concerning their domestic relationships so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interest of justice.

2. Everyone charged with a criminal offence has the right to be presumed innocent until proved guilty according to law.

In the determination of any criminal charge against him, everyone is entitled to the following minimum guarantees :

a. to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

b. to have adequate time and facilities for the preparation of his defence;

c. to defend himself in person or through legal assistance of his own choosing and, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

d. to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

e. to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

ARTICLE 7

(1) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

(2) This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time it was committed, was criminal according to the general principle of law recognised by civilised nations.

ARTICLE 8

(1) Everyone has the right to respect for his private and family life, his home and his correspondence.

(2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with law and is necessary in a democratic society in the interest j of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the right and freedoms of others.

ARTICLE 9

(1) Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion of belief, in worship, teaching, practice and observance.

(2) Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the right and freedoms of others.

ARTICLE 10

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, liabilities, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity, or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

ARTICLE 11

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. Such possessions cannot be subjected to arbitrary confiscation. The present measures shall not however be considered as infringing, in any way the right of a State to pass necessary legislation to ensure that the said possessions are utilised in accordance with the general interest.

ARTICLE 12

Every person has the right to education. The function assumed by the state in respect of education and of teaching may not encroach upon the right of parents to ensure the religious and moral education and teaching of their children in conformity with their own religious and philosophical convictions.

ARTICLE 13

(1) Everyone has the right to freedom, of peaceful assembly and to freedom of associations with others, including the right to form and to join trade unions for the protection of his interests.

(2) No restrictions shall be placed on tho exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, the police or the administration of the State.

ARTICLE 14

Men and women of full age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

ARTICLE 15

Everyone whose rights and freedoms as herein secured are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

ARTICLE 16

The enjoyment of the rights and freedoms secured in this Convention shall be secured without discrimination on any ground such as sex, race, colour, languages, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

ARTICLE 17

The High Contracting Parties undertake to respect the political liberty of their nationals and in particular, with regard to their home territories, to hold free elections at reasonable intervais by secret ballot under conditions which will ensure that the government and legislature shall represent the opinion of the people.

ARTICLE 18

(1) In time of war or other public emergency threatening the life of the nation a State may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

(2) No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (para. 1) and 7 can be made under this provision.

(3) Any State party hereto itself of this right of derogation shall keep the Secretary-General of the Council of Europe fully informed of the measures which it has thus enacted and the reasons therefore. It shall also inform the Secretary-General of tho Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.

ARTICLE 19

Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

ARTICLE 20

Nothing in this Convention may be interpreted as implying for any Stale, group or person, any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

ARTICLE 21

The restrictions permitted under this Convention to these rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

SECTION II

ARTICLE 22

To ensure the observance of the engagements undertaken by the High Contracting Parties in the present Convention, there shall be set up :

1. European Commission of Human Rights hereafter referred to as the " Commission; "
2. A European Court of Human Rights, hereafter referred to as the " Court. "

SECTION III

ARTICLE 23

The Commission shall consist of a number of members equal to that of the High Contracting Parties. No two members of the Commission may be nationals of the same State.

ARTICLE 24

(1) The members of the Commission shall be elected by the Committee of Ministers by an absolute majority of votes, from a list of names drawn up by the Bureau of the Consultative Assembly; each group of the Representatives of the High Contracting Parties in the Consultative Assembly shall put forward three candidates, of whom two at least shall be its nationals.

(2) As far as applicable, the same procedure shall be followed in appointing as members of the Commission nationals of States which adhere to this Convention, and to filling the casual vacancies.

ARTICLE 25

(1) The members of the Commission shall be elected for a period of six years. They may be re-elected. However, of the members elected at the first election, the terms of seven members shall expire at the end of three years.

(2) The members whose terms are to expire at the end of the initial period of three years shall be chosen by lot by the Secretary-General of the Council of Europe immediately after the first election has been completed.

(3) A member of the Commission elected to replace a member whose term of office has not expired shall hold office for the remainder of his predessor's term.

(4) The members of the Commission shall hold office until replaced. After having been replaced, they shall continue to deal with such cases as they already have under consideration.

ARTICLE 26

The members of the Commission shall sit on the Commission in their individual capacity.

ARTICLE 27

Any High Contracting Party may refer to this Commission through the Secretary-General of the Council of Europe any alleged breach of the provisions of the Convention by another High Contracting Party.

ARTICLE 28

(i) The Commission may receive petitions, addressed to the Secretary-General of the Council of Europe from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights recognised in this Convention. The High Contracting Parties undertake not to hinder in any way the effective exercice of thos right.

(ii) Nevertheless, the High Contracting Parlies may at the time of accepting the Convention declare that they exclude the jurisdiction of the Commission of Enquiry as regards private petitions in which they are concerned, involving any article or articles referred to in such a declaration; save that no slate may exclude petitions based on articles 2, 3, 4 (Paragraph 1), or 7, from the jurisdiction of the Commission of Enquiry. Such a declaration can only be made for a maximum of three years; it may only be renewed by means of an express statement made before the expiry of three years from the deposition of the article of ratification in accordance with Article 66.

ARTICLE 29

The Commission may only deal with the matter after all domestic remedies have been exhausted according to the generally recognised rules of international law and within a period of six months from the date on which the final decision was taken.

ARTICLE 30

(1) The Commission shall not deal with any petition submitted under Article 25 which.

a. is anonymous;

b. is substantially the same as the 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.

(2) 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 application.

(3) The Commission shall reject any matter referred to it which it considers inadmissible under Article 26.

ARTICLE 31

In the event of the Commission accepting a matter referred to it :

a. it shall, with a view to ascertaining the facts, undertake an examination, together with the representatives of the parties, of the matter and, if need be, an investigation, for the effective conduct of which the States concerned shall furnish all facilities after an exchange of views with the Commission;

b. it shall place itself at the disposal of the parties concerned with a view to securing a friendly solution of the matter on the basis of respect for Human Rights as defined in this Convention.

ARTICLE 32

(1) The Commission shall perform the functions set out in Article 28 by means of a Sub-Commission consisting of seven members of the Commission.

(2) Each of the parties concerned may appoint as member of this Sub-Commission a person of its choice.

(3) The remaining members shall be chosen by lot in accordance with arrangements prescribed in the Rules of Procedure of the Commission.

ARTICLE 33

If the Sub-Commission succeeds in effecting a settlement in accordance with Article 28, 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 to the solution reached.

ARTICLE 34

(1) If such a solution is not reached 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 opinions of all the members of the Commission on this point may be stated in the Report.

(2) The Report shall be transmitted to the Committee of Ministers. It shall also be transmitted to the States concerned, who shall not be at liberty to publish it.

(3) In transmitting the report to the Committee of Ministers the Commission may make such proposals at it thinks fit.

ARTICLE 35

(1) If the question is not referred to the Court in accordance with Article 48 of this Convention within a period of three months from the date of the transmission of the Report to the Committee of Ministers, the Committee of Ministers shall decide by a majority of two-thirds of the members entitled to sit on the Committee whether t here has been a violation of the Conventions.

(2) In the affirmative case the Committee of Ministers shall prescribe a period during which the High Contracting Party concerned must take the measures implied in the decision of the Committee of Ministers.

(3) If the High Contracting Party concerned has not taken satisfactory measures within the prescribed period, the Committee of Ministers shall decide by the majority provided for in paragraph (1) above what effect shall be given to its original decision and shall publish the Report.

(4) The High Contracting Parties undertake to regard as binding on them any decision which the Committee of Ministers may take in application of the preceding paragraphs.

ARTICLE 36

The Commission shall meet in camera.

ARTICLE 37

The Commission shall take its decisions by a majority of the Members present and voting; the Sub-Commission shall take its decisions by a majority of its members.

ARTICLE 38

The Commission shall meet as the circumstances require. The meetings shall be convened by the Secretary-General of the Council of Europe.

ARTICLE 39

The Commission shall draw up its own rules of procedure.

ARTICLE 40

The Secretariat of the Commission shall be provided by the Secretary-General of the Council of Europe.

SECTION IV

ARTICLE 41

The European Court of Human Rights shall consist of a number of judges equal to that of the Members of the Council of Europe. No two of the judges may be nationals of the same State.

ARTICLE 42

(1) The members of the Court shall be elected by the Consultative Assembly by a majority of the votes cast from a list of persons nominated by the Members of the Council of Europe; each Member shall nominate three candidates, of whom two at least shall be its nationals.

(2) The candidates shall be of high moral character and must either possess the qualifications required for appointment to high judicial office or shall be jurisconsults of recognised competence.

ARTICLE 43

(1) The members of the Court shall be elected for a period of nine years. They may be reelected. However, of the members elected at the first election the terms of four members shall expire at the end of three years, and the terms of four more members shall expire at the end of six years.

(2) The members whose terms are to expire at the end of the initial periods of three and six years shall be chosen by lot by the Secretary-General immediately after the first election has been completed.

(3) The members of the Court shall hold office until replaced. After having been replaced, they shall continue to deal with such cases as they already have under consideration.

ARTICLE 44

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

ARTICLE 45

The members of the Court shall receive for each day of duty a compensation to be determined by the Committee of Ministers.

ARTICLE 46

For the consideration of each case brought before it the Court shall consist of a Chamber composed of 7 judges. There shall sit as an ex officio member of the Chamber the judge who is a national of any State party concerned, or, if there is none, a person of its choice who shall sit in the capacity of judge; the names of the other judges shall bo chosen by lot by the President before the opening of the case.

ARTICLE 47

Only the High Contracting Parties and the Commission shall have the right to bring a case before the Court.

ARTICLE 48

The jurisdiction of the Court shall extend to all cases concerning the interpretation and application of the present Convention which the High Contracting Parties or the Commission shall refer to it in accordance with Article 48.

ARTICLE 49

(1) Any of the High Contracting Parties may at any time declare that it recognises as compulsory ipso facto and without special agreement the jurisdiction of the Court in all matters concerning the interpretation and application of the present Convention.

(2) The declarations referred to above may be made unconditionally or. on condition of reciprocity on the part, of. several or certain other Contracting Parties or for a specified period.

(3) These declarations shall be deposited with the Secretary-General of the Council of Europe who shall transmit copies thereof to the High Contracting Parties.

ARTICLE 50

The Court may only deal with a case after the Commission has acknowledged the failure of efforts at settlement and within the period of three months provided for in Article 32.

ARTICLE 51

The following may bring a case before the Court, provided that the High Contracting Party concerned, if there is only one, or the High Contracting Parties concerned, if there is more than one, are subject to the compulsory jurisdiction of the Court or, failing that, with the consent of the High Contracting Party concerned, if there is only one, or of the High Contracting Parties concerned if there is more than one :

a. the Commission;

b. a High Contracting Party whose national is alleged to be a victim;

c. a High Contracting Party which referred the case to the Commission;

d. a High Contracting Party against which the complaint was made.

ARTICLE 52

In the event of dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.

ARTICLE 53

If the Court finds that a decision or a measure taken by a legal authority or any authority of one of the High Contracting Parties is completely or partially opposed to the obligation arising from the present Convention, and if the internal law of the said Party allows partial reparation to be made for the consequences of this decision or measure; the decision of the Court shall, if necessary, accord just satisfaction to the injured party.

ARTICLE 54

(1) Reasons shall be given for the judgement of the Court.

(2) If the judgement does not represent in whole or in part the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

ARTICLE 55

The judgement of the Court shall be final.

ARTICLE 56

The High Contracting Parties undertake to abide by the decision of the Court in any case to which they arc parties.

ARTICLE 57

The judgement of the Court shall be transmitted 1o the Committee of Ministers which shall supervise its execution.

ARTICLE 58

The Court shall draw up its own rules and shall determine its own procedure.

ARTICLE 59

(1) The first election of the members of the Court shall take place after the declarations by the High Contracting Parties mentioned in Article 49 have reached a total of eight.

(2) No case can be brought before the Court before this election.

SECTION V

Miscellaneous and final provisions

ARTICLE 60

On receipt of a request to that effect from the Secretary-General of the Council of Europe the Government of any State Party to this Convention shall supply an explanation of the manner in which the law of that State gives effect to any of the provisions in this Convention.

ARTICLE 61

The expenses of the Commission and the Court shall be borne by the Council of- Europe.

ARTICLE 62

The members of the Commission and of the Court shall be entitled, during the discharge of their functions, to the privileges and immunities provided for in Article 40 of the Statute of the Council of Europe and in the agreements made thereunder.

ARTICLE 63

Nothing in this Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any High Contracting Party or under any other agreement to which it is a Party.

ARTICLE 64

Nothing in this Convention shall prejudice the powers conferred on the Committee of Ministers by the Statute of the Council of Europe.

ARTICLE 65

The High Contracting Parties agree that, except by special agreement, they will not avail themselves of treaties, conventions or declarations in force between them for the purpose of submitting, by way of petition, a dispute arising out of the interpretation or application of this Convention to a means of settlement other than those provided for in this Convention.

ARTICLE 66

(1) Any State may when signing this Convene tion or when depositing its instrument of ratification or accession, make a reservation in respect of any particular provision of the Convention to the extent that any law then in force in its territory is not in conformity with the provision. Reservations of a general character shall not be permitted under this Article.

(2) Any reservation made under this Article shall contain a brief statement of the law concerned.

(3) Any State may also, at the time of its signature of this Convention or the deposit of its instrument of ratification or accession, make a declaration, in accordance with the procedure laid down under Article 25 of this Convention, restricting for all or any of the territories to which the Convention is applied the competence of the Commission to take cognizance of the petitions of persons, nongovernmental organisations, or groups of individuals.

ARTICLE 67

(1) A High Contracting Party may not denounce the present Convention before the expiry of five years from the date on which it became a Party to it and after a notification addressed six months beforehand to the Secretary- General of the Council of Europe, who shall inform the other High Contracting Parties.

(2) Such a denunciation shall not have the effect of releasing the High Contracting Party concerned from its obligations under this Convention in respect of any act which, being capable of constituting a violation of this Convention, shall have been performed by it before the date at which the denunciation became effective.

(3) Any High Contracting Party which shall cease to be a Member of the Council of Europe shall cease to be a Party to this Convention under the same conditions.

(4) The Convention may be denounced in accordance with the provisions of the preceding paragraphs in respect of any territory to which it has been declared to extend under the terms of Article 63.

ARTICLE 68

(1) The Convention shall be open to the signature of the Members of the Council of Europe and submitted for ratification. Ratifications shall be deposited with the Secretary-General of the Council of Europe.

(2) This Convention shall come into force after the deposit of ten instruments of ratification.

(3) As regards any signatory State ratifying subsequently the Convention shall come into force at the date of the deposit of its instrument of ratification.

(4) Any member of the Council of Europe may accede thereafter to this Convention by depositing its instrument of accession with the Secretary-General of the Council of Europe.

(5) The Secretary-General of the Council of Europe shall notify all the High Contracting Parties of the entry into force of the Convention, the names of the High Contracting Parties who have ratified it, and the deposit of all instruments of ratification or accession which may be effected subsequently.