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Draft Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms

Report¹

Committee on Legal Affairs and Human Rights

NOTE : This Report was transmitted to the Committee of Ministers on October 3rd, 1951 by the Committee on Legal and Administrative Questions, acting on behalf of the Assembly, in accordance with the decision taken by the Assembly on 15th May, 1951 (See Third Session, 1951 : Reply of the Consultative Assembly to the Report and the Message from the Committee of Ministers, para. 11).

1. 1951 - 3rd Session - Second part



A. Explanatory Memorandum

1. The Committee pays tribute to the efforts made by the Committee of Ministers to complete the Convention for the Protection of Human Rights and Fundamental Freedoms along the lines desired by the Consultative Assembly. It, nevertheless, considers that it should make the following observations regarding certain provisions of the Protocol.
2. Article 1. — No comments.
3. Article 2. — First proposal : no comments.
4. Article 2. — The second proposal is worded as follows :
5. — " In the exercise of any functions which it may assume in relation, to education and to teaching, the State shall have regard to the right of parents to ensure the religious education of their children in conformity with their own creeds. "
6. Comparing this text with that adopted by the Assembly, the Committee notes :
 - 6.1. That the States will now only be undertaking to " have regard to the right of parents", a phrase which is too elastic to secure the supervision which it is the aim of the Convention to bring about.
 - 6.2. That the rights of parents thus recognised only extend to the religious education of their children and no longer to their general education according, to the convictions of the parents. This will undoubtedly be interpreted in the majority of States as an appreciable step backwards, which it will be difficult to accept, in relation to [the traditional conception of freedom of education. If it is feared that any other formula would imply the duty of the State to establish or to support, out of public funds, in whole or in part, schools corresponding to the various trends of opinion in the population, the Committee can only repeat, as has already been stated in, the Consultative Assembly, that this question, should be considered as being entirely outside the scope of the Convention or the Protocol.
 - 6.3. While the text proposed by the Assembly guaranteed, respect, both for: the philosophical and for the religious convictions of parents, the present Protocol speaks only of respect for religious convictions. This curtailment will certainly be keenly resented in several countries. In the explanation given by the Secretariat, the main reason for the omission was the desire to prevent the spread of doctrines directly opposed to the very principles on which the Convention is based. The Committee points out, however, that this concern had already been expressed during the discussion of other freedoms and had led to the inclusion in the text of the Convention of a general clause which satisfactorily covers the question of education. The wording of Article 17 is as follows :—
7. " Nothing in this Convention may be interpreted as implying for any State, 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. "
8. As for the objection that the constitution of a country with a State religion would not allow such extensive freedom as is proposed by the Assembly, it seemed to our Committee to be contrary to the current interpretation of the idea of State religion, and that in any case this objection should not prevent other States from holding to the traditional conception of freedom of education.
9. It is on the basis of the above considerations that the Committee proposes replacing Article 2 by the following text :—
10. " No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions. "
11. Article 3. — The Committee on Legal and Administrative Questions readily accepts the objection made by the Experts of the Committee of Ministers that the statement of political liberty was not sufficiently precise. The Committee likewise notes the fear expressed that the idea of representation might be interpreted too narrowly. It considers, however, that the proposed text (the French version of which appears in any case to contain a mistake in the last line— " sur " instead of " dans ") should be replaced by the following :—
12. " The High Contracting Parties undertake to hold free elections of the legislature at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the will of the people. "

13. Articles 4 and 5. — The Committee appreciates the desire of the Committee of Ministers to leave it open to the signatory Powers provisionally not to incorporate all or some of the Articles of the Protocol in the declaration to be made by them under Article 63 of the Convention.

14. The Committee notes, however, that the present wording may leave some doubt as to whether Article 63 of the Convention is included among the provisions of the Convention which are made applicable to the Protocol by Article 5 thereof. If so, it is not clear how this fits in with Article 4 of the Protocol.

15. To remove all doubts on the question the Committee proposes that Article 4 should be replaced by the following clause, to be added to Article 5 of the Protocol (which will become Article 4) :

16. " However, when use is made of the option provided for in Article 63 of the Convention of declaring that the Convention shall extend to the territories for whose international relations a State is responsible, exception may be made of Articles 1, 2 or 3 of the present Protocol.

17. Such an exception may be revoked at any time, it may also be incorporated at any time in the declaration."

18. Article 6. — (which will become Article 5)— no comment.

19. The Committee was unanimous in making the above observations and sincerely hopes that it may be possible for the Committee of Ministers to amend the Protocol accordingly.

B. Draft Opinion for the Committee of Ministers

The Assembly,

Having been asked by the Committee of Ministers for an opinion on the Draft Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms,

Is of the opinion that the Draft should be amended as follows :

Article 1

No alteration

Article 2

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

Article 3

The High Contracting Parties undertake to hold free elections of the legislature at reasonable intervals by secret ballot under conditions which will ensure the free expression of the will of the people.

Article 4

Omitted

Article 5

The High Contracting Parties will regard Articles 1, 2, 3 and 4 of this Protocol as additional Articles to the Convention, and all the provisions of the Convention shall apply accordingly.

However, when use is made of the option provided for in Article 63 of the Convention of declaring that the Convention shall extend to the territories for whose international relations a State is responsible, exception may be made of Articles 1, 2 or 3 of the present Protocol.

Such an exception may be revoked at any time; it may also be incorporated at any time in the Declaration.

Article 6

No alteration