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

Communication

1. COMMUNICATION FROM THE COMMITTEE OF MINISTERS[1] on the Protocol to the Convention for the Protection of Human Rightt and Fundamental Freedoms

Rome, 28th November, 1951.

Sir,

I have the honour to inform you that the Governments of the Members of the Council of Europe have given careful consideration to the opinion of the Committee on Legal and Administrative Questions on the draft Protocol to the Convention for the Protection of Hunlan Rights and Fundamental Freedoms. (Doc. 81.)

In considering the observations of the Assembly Committee the Governments have been guided principally b y two considerations. These were, in the first place, the desirability of arranging for the Protocol to be signed at the earliest possible date, having regard to the fact that it has now been under discussion for over a year and that a number of Governments have postponed initiating the legislative action necessary for the ratification of the Convention until the Protocol should be signed; secondly, the wish to secure unanimous agreement among the Governments for any modifications made to the draft approved by the Committee of Ministers in August, which itself secured the unanimous agreement of the Governments only as a result of protracted negotiations over a period of many months.

The Governments were anxious to meet the views expressed by the Committee on Legal and Administrative Questions so far as this was possible in the light of the considerations set out above. In pursuance of this objective, the following decisions were taken :

Article 2

This article was re-examined in an endeavour to comply with the desire expressed by the Assembly Committee that recognition should be given to the principle of the independent school (enseignement libre). In order to comply with this desire it was agreed to add to Article 2 of the earlier draft approved in August the following words :

" ...and, where schools have been established by the State, to send their children to any other school of their choice, provided that such school conforms with the requirements of the law.

Nevertheless, it is to be observed that, as a result of this addition, one Member Government has indicated that it may have to make a reservation at the time of signature or ratification of the Protocol.

Article 3

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1. See 3rd Sossion, 1951 : Docs. 78 (Request for an Opinion from the Committee of Ministers) and 81 (Report from the Committee on Legal and Administrative Questions). See also 3rd Session, 1951 : Doc. 93.

The Governments felt unable to accept the new text proposed b y the Committee on Legal and Administrative Questions because of the words " T h e High Contracting Parties undertake to hold free elections of the Legislature... " may be interpreted as an obligation to hold elections for both Chambers of the; Legislature. This is unacceptable to the Governments of some States where the upper Chamber i s , either in whole or in part, not elective but hereditary (as in Great Britain), or appointed (as in Belgium). The text adopted by the Committee of Ministers in August had been carefully drafted to avoid this: difficulty, and the Committee has therefore felt it necessary to maintain the earlier text.

Articles 4 and 5

The observation of the Committee on Legal and Administrative Questions that the text adopted in August left some doubt as to the relationship between article 63 of the Convention and Articles 4 and 5 of the Protocol was given careful consideration. It was not felt possible to accept the amended text proposed by the Assembly Committee for the following reason : the text previously adopted by the Committee of Ministers required a positive declaration by the High Contracting Party concerned before the rights set out in the Protocol would apply to colonial territories; the text proposed by the Assembly Committee would reverse this process and impose on a State which made a declaration under Article 63 of the Convention the necessity of expressly excepting the provisions of the Protocol, if they were not to apply automatically to the colonial territory in question. It was felt that this procedure would put the Governments concerned in an invidious position, as compared with the procedure contemplated in the earlier draft.

In order to avoid this contingency, but at the. same time take account of, the doubts felt b y the Assembly Committee, it was decided to add at the end of Article 4 the following words :

" A declaration made in accordance with this Article shall be deemed to have been made in accordance with paragraph 1 of Article 63 of the Convention. "

The final text of the Protocol is attached, hereto, and I should be grateful if you would be so good as to communicate it to the Consultative Assembly for information. It will be signed either on the occasion of the next session, of the Committee of Ministers, if that: date, is not long delayed1, or at Paris b y plenipotentiaries anthobres rised to sign for the Governments in the course of the next few weeks.

I am, Sir, your humble and obedient Servant,

Signed : LANGE.

Chairman of the Committee of Ministers.

Monsieur Paul-Henri SPAAK,

President of the Consultative Assembly of the Council of Europe,

STRASBOURG

Appendix APPENDIX

DRAFT PROTOCOL TO THE CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS.

The Governments signatory hereto, being Members of the Council of Europe,

Being resolved to take steps to ensure the collective enforcement of certain rights and freedoms other than those already included in Section I of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4th November, 1950 (hereinafter referred to as " the Convention "),

Have agreed as follows :

Article 1

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest, and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

Article 2

No person shall be denied the right to receive education. 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 and, where schools have been established by the State, to send their children to any other school of their choice, provided that such school conforms with the requirements of the law.

Article 3

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

Article 4

Any High Contracting Party may, at the time of signature or ratification or at any time thereafter, communicate to the Secretary-General of the Council of Europe a declaration stating the extent to which it undertakes that the provisions of the present Protocol shall apply to such of the territories for the international relations of which it is responsible as are named therein.

Any High Contracting Party which has communicated a declaration in virtue of the preceding paragraph may from time to time communicate a further declaration modifying the terms of any former declaration or terminating the application of the provisions of this Protocol in respect of any territory.

A declaration made in accordance with this article shall be deemed to have been made in accordance with paragraph 1 of Article 63 of the Convention.

Article 5

As between the High Contracting Parties the provisions of Articles 1, 2, 3 and 4 of this Protocol shall be regarded as additional Articles to the Convention, and all the provisions of the Convention shall apply accordingly.

Article 6

This Protocol shall be open for signature by the Members of the Council of Europe, who are the signatories of the Convention; it shall be ratified at the same time as or after the ratification of the Convention. It shall enter into force after the deposit of ten instruments of ratification. As regards any signatory ratiet fying subsequently, the Protocol shall enter into force at the date of the deposit of its instrument of ratification.

The instruments of ratification shall be deposited with the Secretary-General of the Council of Europe, who will notify all Members of the names of those who have ratified.

Done at on the day of 1952.

in English and French, both texts being equally authentic, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary-General shall transmit certified copies to each of the signatory Governments.