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Measures for the fulfilment of the declared aim of the Council of Europe, in accordance with Article 1 of the Statute, in regard to the protection and further realisation of human rights and fundamental freedoms

Report¹

Committee on Legal Affairs and Human Rights

Rapporteur: Mr Pierre-Henri TEITGEN, France

1. 1951 - 3rd Session - Second part



A. Draft Recommendation

The Committee on Legal and Administrative Questions has duly taken cognizance of the Communication from the Committee of Ministers dated 28th November, 1951 (Doc. 84) relating to the Draft Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms.

1. The Committee would remind the Assembly of the wording of paragraph 11 of the Reply made by the Assembly on 17th May, 1951 to the Report of the Committee of Ministers :

" The Assembly views with some anxiety the suggestion mentioned in the Supplementary Report (of the Committee of Ministers) that, after review by experts and agreement between Governments, a Protocol embodying the texts relating to the right to own property, the right of education and political rights, will be signed without further reference to the Assembly. These texts were a compromise accepted with few abstentions and no opposition in the Assembly. The Assembly therefore submits that, both as a matter of right and of courtesy, it should be given an opportunity of commenting on any modified version thereof before they are signed, or, if the Assembly is not in session, that they be transmitted to the President of the Consultative Assembly for reference to the appropriate Committee. "

The Committee of Ministers having subsequently complied with this procedure in due deference to the rights of the Assembly in this matter, your Committee on Legal and Administrative Questions proposes that you regard the above-mentioned letter from the Committee of Ministers of 28th November, 1951 as having been transmitted not for your information but for your opinion. (See also in this connection paragraph 35 of the Second Supplementary Report from the Committee of Ministers — Reference : Doc. 60.)

2. The Committee on Legal and Administrative Questions has carefully examined the new draft Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms transmitted to it by the Committee of Ministers (Doc. 84) following the opinion submitted to it by the Committee on 3rd October, 1951 (Doc. 81).

3. The conclusions of the Committee were as follows :

Article 1 : No comment.

Article 3 : No comment.

Articles 4 and 5 :

The opinion previously formulated by the Committee on the subject of these Articles was worded as follows :

" 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.

" 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.

" To remove all doubt 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) :

" 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. "

The Committee observed that the new version proposed by the Committee of Ministers, far from removing the ambiguity which had been feared, might accentuate it. The Committee wishes to emphasize that the responsibility for this version rests on the experts of the Committee of Ministers.

Article 6 : No comment.

Article 2 : With regard to Article 2 of the draft Protocol, the Committee decided by 13 votes to 0, with 1 abstention, that it should formulate a definitely adverse opinion.

Recalling its previous opinion transmitted to the Committee of Ministers on 3rd October, 1951 (Doc. 81), the Committee would point out once again :

(a) That from the legal point of view it is meaningless to state in a declaration of rights backed by a jurisdictional sanction that the signatory States shall be obliged merely to " have regard to " the right of parents.

The totalitarian regimes which hang their adversaries " have regard "—at the end of the rope—to the latter's right to live.

(b) That the rights to which parents can and should be entitled, as the Assembly declared on 25th August, 1950 by 97 .votes to 0 with 15 abstentions, and by 111 votes out of 111 on the text as a whole, extend not only to the education but also to the teaching given to their children.

(c) That the right of parents which it is vital to protect is, in the opinion of the Assembly, the right of parents to respect by the State not only of their religious but also their philosophical convictions, whatever these may be; and that it is therefore impossible to confine the guarantee to religious convictions only.

The Committee recalls, in this connection, that Article 17 of the General Convention signed in Rome on 4th November, 1950, a Convention which the Draft Protocol was intended merely to complete, provides a decisive answer to the argument put forward by the Committee of Ministers in opposition to the text previously approved by the Committee and the Assembly.

Consequently, the Committee on Legal and Administrative Questions proposes that the Assembly once again recommend to the Committee of Ministers that Article 2 of the Draft Protocol be worded as follows :

" 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. "

The Committee would add that it has been warned by several of its Members that if the version of the Committee of Ministers is retained the whole Protocol, at the very least, might be rejected by a number of national Parliaments.

In the light of these comments, the Committee on Legal and Administrative Questions proposes that the Assembly adopt the following Recommendation :

B. Draft Recommendation

" The Assembly,

Having before it the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms,

Recommends to the Committee of Ministers that this draft be amended as follows :

Article 1

No alteration.

Article 2

No person shall be denied the right to receive 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.

Articles 3 to 6

No alteration.