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Protocol No. 8

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

Vienna, 19 March 1985

[The United Kingdom instrument of ratification was deposited on 21 April 1986 and the Protocol entered into force on 1 January 1990]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
July 1990*

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**PROTOCOL NO. 8
TO THE CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND
FUNDAMENTAL FREEDOMS**

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 1950¹ (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."

¹ Treaty Series No. 71 (1953), Cmnd. 8969.

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 decisions 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 Parties to the Convention have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 12¹.

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.

¹The Protocol entered into force on 1 January 1990.

SIGNATURES AND RATIFICATIONS

<i>State</i>	<i>Date of signature</i>	<i>Date of deposit of instrument of Ratification, Acceptance (Ac) or Approval (App)</i>
Austria *	19 Mar 1985	17 Apr 1986
Belgium *	19 Mar 1985	8 Nov 1985
Cyprus *	8 Nov 1985	13 June 1986
Denmark	19 Mar 1985	not required
Finland *	5 May 1989	
France *†	19 Mar 1985	9 Feb 1989 (App)
Germany, Federal Republic of *†	19 Mar 1985	19 Sept 1989
Greece *	19 Mar 1985	6 Sept 1989
Iceland *	19 Mar 1985	22 May 1987
Ireland, Republic of *†	20 Mar 1985	21 Mar 1988
Italy *...	19 Mar 1985	29 Dec 1988
Liechtenstein *	19 Mar 1985	28 Aug 1985
Luxembourg *	19 Mar 1985	4 Nov 1987
Netherlands *†	20 Mar 1985	11 Dec 1986 (Ac)
Norway *	19 Mar 1985	25 Oct 1988
Portugal *	19 Mar 1985	12 Mar 1987
San Marino *...	1 Mar 1989	22 Mar 1989
Spain *	19 Mar 1985	23 June 1989
Sweden *	19 Mar 1985	10 Jan 1986
Switzerland *...	19 Mar 1985	21 May 1987
Turkey *	4 Feb 1986	19 Sept 1989
United Kingdom *†‡	19 Mar 1985	21 Apr 1986

* Subject to ratification or acceptance.

† For reservations and declarations see page 7.

‡ The United Kingdom instrument of ratification includes the Bailiwick of Jersey, the Bailiwick of Guernsey, the Isle of Man, Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, South Georgia and the South Sandwich Islands, Gibraltar, Montserrat, Saint Helena, Saint Helena Dependencies and Turks and Caicos Islands.

RESERVATIONS AND DECLARATIONS

FRANCE

On signing the Protocol the Government of the French Republic made the following declaration:

“ La procédure d'approbation par la France du Protocole No. 8 à la Convention de sauvegarde des Droits de l'Homme et des Libertés Fondamentales sera engagée à la lumière des mesures mises au point au sein du Conseil de l'Europe pour l'application de cet instrument ”.

Translation

“ The procedure for approval by France of Protocol No. 8 to the Convention for the protection of human rights and fundamental freedoms will be instituted in the light of the measures to be taken in the Council of Europe for the implementation of this instrument. ”

GERMANY, FEDERAL REPUBLIC OF

On ratifying the Protocol the Government of the Federal Republic of Germany made the following declaration:

In connection with the deposit today of the instrument of ratification of Protocol No. 8 to the Convention for the Protection of Human Rights and Fundamental Freedoms of 19 March 1985, I have the honour to declare on behalf of the Government of the Federal Republic of Germany that Protocol No. 8 shall apply to Land Berlin with effect from the date on which it enters into force for the Federal Republic of Germany.

IRELAND, REPUBLIC OF

On ratifying the Protocol the Government of the Republic of Ireland made the following declaration:

At the time of deposit of the Instrument of Ratification, I have been directed by the Tánaiste (Deputy Prime Minister) and Minister for Foreign Affairs of Ireland to state that the Government of Ireland attach importance to the establishment by the European Commission of Human Rights, in their Rules of Procedure, of a provision that before any application is referred to a Chamber of the Commission, as provided for by Protocol No. 8, the member State against which such an application has been lodged shall be given the opportunity to express an opinion as to whether the application should be referred to a Chamber or to the plenary Commission. It is the clear understanding of the government of Ireland that such a consultation process is to be provided for by the European Commission of Human Rights.

NETHERLANDS

On accepting the Protocol the Government of the Netherlands made the following declaration:

“ The Kingdom of the Netherlands accepts the Protocol for the Kingdom in Europe, the Netherlands Antilles and Aruba. ”

UNITED KINGDOM

On ratifying the Protocol the Government of the United Kingdom made the following declaration:

“ In connection with the implementation of the new procedures provided for by the Protocol, I have been directed by Her Majesty's Principal Secretary of State for Foreign and Commonwealth Affairs to place on record that it is the understanding of the United Kingdom Government that the European Commission of Human Rights will establish in its Rules of Procedure or otherwise a practice of consultation between the Commission and the member State against which an application is brought on the question whether that application should be considered by a Chamber or by the full Commission.

The United Kingdom attaches considerable importance to the establishment of such a consultation process. ”



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