

Nru. 154

23. 4. 2002

MALTA

KAMRA TAD-DEPUTATI

ABBOZZ ta' Ligi mressaq mill-Onorevoli Austin Gatt, M.P., Ministru tal-Ġustizzja u Gvern Lokali, u moqri għall-Ewwel Darba fis-Seduta tat-22 ta' April, 2002.

ATT biex jemenda l-Att dwar il-Konvenzjoni Ewropea, Kap. 319.

RICHARD J. CAUCHI
Skrivan tal-Kamra tad-Deputati

HOUSE OF REPRESENTATIVES

A BILL introduced by the Honourable Austin Gatt, M.P., Minister of Justice and Local Government, and read the First time at the Sitting of the 22nd April, 2002.

AN ACT to amend the European Convention Act, Cap. 319.

RICHARD J. CAUCHI
Clerk to the House of Representatives

ABBOZZ TA' LIĠI
msejjah

ATT biex jemenda l-Att dwar il-Konvenzjoni Ewropea, Kap. 319.

IL-PRESIDENT, bil-parir u l-kunsens tal-Kamra tad-Deputati, imlaqqgħa f' dan il-Parlament, u bl-awtorità ta' l-istess, hareġ b'liġi dan li ġej:-

1. (1) It-titolu fil-qosor ta' dan l-Att hu Att ta' l-2002 li jemenda l-Att dwar il-Konvenzjoni Ewropea. Titolu fil-qosor u bidu fis-sehh.

(2) Dan l-Att għandu jinqara u jiftiehem haġa wahda ma' l-Att dwar il-Konvenzjoni Ewropea, hawnhekk iżjed 'il quddiem imsejjah "l-Att prinċipali" u għandu jibda jsehh f' dik id-data li l-Prim Ministru jista' b'avviż fil-Gazzetta jstabilixxi, u dati differenti jistgħu jiġu hekk stabbiliti għal għanijiet differenti u disposizzjonijiet differenti ta' l-Att. Kap. 319.

2. L-artikolu 2 ta' l-Att prinċipali għandu jiġi emendat kif ġej: Emenda ta' Artikolu 2 ta' Att prinċipali.

(a) Minflok it-tifsira "Konvenzjoni" għandha tidhol din li ġejja:

““Konvenzjoni” tfisser il-Konvenzjoni għall-Protezzjoni tad-Drittijiet tal-Bniedem u tal-Libertajiet Fondamentali ffirmata f'Ruma fl-4 ta' Novembru, 1950 u l-Ewwel, it-Tieni, t-Tielet, ir-Raba', l-Hames, is-Sitt u s-Seba' Protokolli li hemm magħha ffirmati f'Parigi fl-20 ta' Marzu 1952, u fi

Strasbourg fis-6 ta' Mejju 1963, 6 ta' Mejju 1963, 16 ta' Settembru 1963, 20 ta' Jannar 1966, 18 ta' April 1983 u 22 ta' Novembru 1984, rispettivament;" u

(b) minflok it-tifsira "Drittijiet tal-Bniedem u Libertajiet Fondamentali" ghandha tidhol din li ġejja:

" "Drittijiet tal-Bniedem u Libertajiet Fondamentali" tfisser dawk id-drittijiet u libertajiet elenkati fl-artikoli 2 sa 18 (inklużi) tal-Konvenzjoni u l-artikoli 1 sa 3 (inklużi) ta' l-Ewwel Protokoll, l-artikoli 1 sa 4 (inklużi) tar-Raba' Protokoll, l-artikoli 1 u 2 tas-Sitt Protokoll u l-artikoli 1 sa 5 (inklużi) tas-Seba' Protokoll li hemm mal-Konvenzjoni, liema artikoli qeghdin jingiebu fl-Ewwel Skeda li tinsab ma' dan l-Att;" .

Żjieda ta' Artikolu 4A ġdid ma' l-Att prinċipali.

3. Minnufih wara l-artikolu 4 ta' l-Att prinċipali, ghandu jiżdied dan l-artikolu 4A ġdid li ġej:

"Regoli speċjali li japplikaw f'konnessjoni ma' Artikolu 3 tas-Seba' Protokoll li hemm mal-Konvenzjoni.

4A. (1) Id-disposizzjonijiet tal-paragrafi 22 sa 25 (inklużi) tar-Rapport Spjegattiv fuq is-Seba' Protokoll għall-Konvenzjoni hawn miġjub fit-Tielet Skeda li tinsab ma' dan l-Att għandhom japplikaw għall-interpretazzjoni tad-disposizzjonijiet ta' dawn il-provvedimenti li ġejjin ta' dan l-artikolu u ta' l-Artikolu 3 tas-Seba' Protokoll li hemm mal-Konvenzjoni.

(2) L-oghla kumpens li jithallas taht l-artikolu 3 tas-Seba' Protokoll li hemm mal-Konvenzjoni għandu jkun ta' ghaxart elef lira. Dak il-kumpens għandu jiġi stabbilit permezz ta' ftehim bejn il-parti li tkun qed titlob dak il-kumpens jew jekk ma jkunx hemm ftehim bhal dak mill-Qorti Ċivili, Prim Awla, wara li jsir rikors minn min ikun qed jitlob il-kumpens u li għandu jsir fi żmien sitt xhur mid-data meta s-sejbien ta' htija ta' dik il-persuna jkun ġie rivertit jew minn meta dik il-persuna tkun inghatatilha mahfra.

(3) Appell minn kif jiġi stabbilit il-kumpens mill-Qorti Ċivili, Prim Awla, għandu jsir quddiem il-Qorti ta' l-Appell b'rikors li jiġi pprezentat fi żmien ghoxrin ġurnata minn meta jinqata' r-rikors mill-Qorti Ċivili, Prim Awla."

Sostituzzjoni ta' Artikolu 7 ta' l-Att prinċipali.

4. Minflok l-artikolu 7 ta' l-Att prinċipali għandu jidhol dan li ġej:

"Disposizzjoni transitorja.

7. Ebda ksur ta' l-Artikoli 2 sa 18 (inklużi) tal-Konvenzjoni jew ta' l-Artikoli 1 sa 3 (inklużi) ta' l-Ewwel

Protokoll li jsir qabel it-30 ta' April 1987 jew ta' l-Artikoli 1 sa 4 (inklużi) tar-Raba' Protokoll, l-artikoli 1 u 2 tas-Sitt Protokoll jew ta' l-Artikoli 1 sa 5 (inklużi) tas-Seba' Protokoll li jsir qabel l-1 ta' April 2002, ma ghandu jaghti lok ghal xi azzjoni taht l-artikolu 4 ta' dan l-Att.”.

5. Minnufih fi tmiem l-Ewwel Skeda li tinsab ma' l-Att principali ghandu jizdied dan li ġej:

Emenda ta' l-Ewwel Skeda li tinsab ma' l-Att principali.

“Artikoli 1 sa 4 tar-Raba' Protokoll li hemm mal-Konvenzjoni ghall-Protezzjoni tad-Drittijiet tal-Bniedem u tal-Libertajiet Fondamentali.

Artikolu 1 - Projbizzjoni ta' prigunerija ghal dejn

Hadd ma ghandu jiġi ipprivat mil-libertà tiegħu unikament minhabba fl-inkapaċità tiegħu li jwettaq obligazzjoni kuntrattwali.

Artikolu 2 - Libertà ta' moviment

1. Kull min ikun b' mod legittimu fil-limiti tat-territorju ta' xi Stat ghandu, fil-limiti ta' dak it-territorju, ikollu d-dritt ghal-libertà ta' moviment u l-libertà li jagħzel ir-residenza tiegħu.

2. Kulhadd ikun liberu li jitlaq minn xi pajjiż, inkluż dak tiegħu nnifsu.

3. Ma ghandhom jitqeghdu ebda restrizzjonijiet fuq l-esercizzju ta' dawn id-drittijiet hlief dawk li jkunu skond il-liġi u li jkunu mehtieġa f' soċjetà demokratika f' kull interess tas-sigurtà nazzjonali jew tas-sigurezza pubblika, għaż-żamma ta' l-ordni pubbliku, għall-prevenzjoni ta' reati, għall-protezzjoni tas-sahha jew tal-morali, jew għall-protezzjoni tad-drittijiet u l-libertajiet ta' l-ohrajn.

4. Id-drittijiet stipulati fil-paragrafu 1 jistgħu jkunu wkoll sugġetti, f' arei partikolari, għal restrizzjonijiet imposti skond il-liġi u li jkunu ġustifikati bl-interess pubbliku f' soċjetà demokratika.

Artikolu 3 - Projbizzjoni ta' tkeċċija ta' ċittadini

1. Hadd ma ghandu jiġi mkeċċi, minhabba jew xi miżura individwali jew xi waħda kollettiva, mit-territorju ta' l-Istat li jkun ċittadin tiegħu.

2. Hadd ma ghandu jiġi pprivat mid-dritt li jidhol fit-territorju ta' l-Istat li jkun ċittadin tiegħu.

Artikolu 4 - Projbizzjoni ta' tkeċċija kollettiva ta' frustieri

It-tkeċċija kollettiva ta' frustieri hija pprojbita.

Artikoli 1 u 2 tas-Sitt Protokoll li hemm mal-Konvenzjoni għall-Protezzjoni tad-Drittijiet tal-Bniedem u tal-Libertajiet Fondamentali.

Artikolu 1 - Abolizzjoni tal-piena tal-mewt

Il-piena tal-mewt għandha tkun abolita. Hadd ma għandu jiġi kkundannat għal dik il-piena jew titnehhilu hajtu.

Artikolu 2 - Piena tal-mewt fi żmien il-gwerra

Stat jista' jipprovdi fil-liġi tiegħu li jkun hemm il-piena tal-mewt dwar dawk l-attijiet li jsiru fi żmien il-gwerra jew ta' theddida imminenti ta' gwerra; dik il-piena għandha tinghata biss fl-istanzi stipulati fil-liġi u skond id-disposizzjonijiet relattivi. L-Istat għandu jikkomunika lis-Segretarju Ġenerali tal-Kunsill ta' l-Ewropa d-disposizzjonijiet rilevanti ta' dik il-liġi.

Artikoli 1 sa 5 tas-Seba' Protokoll li hemm mal-Konvenzjoni għall-Protezzjoni tad-Drittijiet tal-Bniedem u tal-Libertajiet Fondamentali.

Artikolu 1 - Salvagwardji proċedurali li għandhom x'jaqsmu mat-tkeċċija ta' frustieri

1. Frustier li jkun b'mod legittimu residenti fit-territorju ta' xi Stat ma għandux jiġi mkeċċi minn dak l-Istat hliet b'konsegwenza ta' xi deċiżjoni magħmula skond il-liġi u għandu jkun permess:

- a. li jippreżenta r-raġunijiet tiegħu għaliex ma għandux jitkeċċa.
- b. li jkollu l-każ tiegħu rivedut, u
- ċ. li jkun rappreżentat għal dawn ir-raġunijiet quddiem l-awtorità kompetenti jew xi persuna jew persuni li jiġu msemmija minn dik l-awtorità.

2. Frustier jista' jiġi mkeċċi qabel ma jwettaq id-drittijiet tiegħu taht paragrafu 1a, b u ċ ta' dan l-artikolu, meta dik it-tkeċċija tkun meħtieġa fl-interess ta' l-ordni pubbliku jew tkun imsejjsa fuq raġunijiet ta' sigurtà nazzjonali.

Artikolu 2 - Dritt ta' appell f'materja kriminali

1. Kull min jinsab hati ta' reat kriminali minn xi tribunal ikollu d-dritt li dak is-sejbien ta' htija jew dik is-sentenza jiġu rivisti minn tribunal oghla. L-esercizzju ta' dan id-dritt, inklużi r-raġunijiet abbażi ta' dak l-esercizzju, għandhom ikunu regolati bil-liġi.

2. Dan id-dritt jista' jkun sugġett għal eċċezzjonijiet dwar reati ta' xorta mhux kontravvenzjonali, skond ma jkunu preskritti bil-liġi, jew f'każijiet li fihom il-persuna involuta tkun giet ipproċessata fl-ewwel istanza mill-oghla tribunal jew tkun insabet hatja wara appell kontra l-liberazzjoni.

Artikolu 3 - Kumpens għal sejbien ta' htija mhux kif imiss

Meta persuna tkun b'deċiżjoni finali insabet hatja ta' reat kriminali u meta sussegwentement s-sejbien tagħha ta' htija jkun gie rivertit, jew tkun inghatat il-mahfra, minhabba f'li xi fatt ġdid jew li jkun għadu kemm gie mikxuf ikun juri konkluzivament li kien hemm nuqqas ta' ġustizzja magħmula mill-qorti, il-persuna li tkun garrbet il-piena bħala riżultat ta' dak is-sejbien ta' htija għandha tinghata kumpens skond il-liġi jew il-prattika ta' l-Istat inkwistjoni, kemm-il darba ma tingiebx prova li n-nuqqas ta' żvelar tal-fatt mhux konoxxut fil-hin ikun għalkollox jew f'parti minnu attribwibbli għal dik l-istess persuna.

Artikolu 4 - Id-dritt li persuna ma tiġix ipproċessata jew ikkastigata darbtejn.

1. Hadd ma jista' jkun ipproċessat jew jerga' jiġi kkastigat għaldarbohra fi proċedimenti kriminali taht il-ġurisdizzjoni ta' l-Istess Stat għal xi reat li dwaru jkun diġà gie finalment liberat jew misjub hati skond il-liġi u l-proċedura penali ta' dak l-Istat.

2. Id-disposizzjonijiet tal-paragrafu preċedenti ma għandhomx iżommu milli l-każ jerga' jinfetaħ skond il-liġi u l-proċedura penali ta' l-Istat inkwistjoni, jekk ikun hemm provi ta' xi fatti godda jew li jkunu għadhom kif ġew żvelati, jew inkella jekk ikun hemm xi vizzju fundamentali fil-proċedimenti ta' qabel, li jista' jkollhom effett fuq kif jiżvolgi l-każ.

3. Ebda deroga minn dan l-artikolu ma għandha ssir taht l-artikolu 15 tal-Konvenzjoni.

Artikolu 5 - Egwáljanza bejn il-konjuġi

Il-konjuġi ghandhom igawdu egwáljanza fid-drittijiet u r-responsabbiltajiet ta' xorta tad-dritt privat bejnithom, u fir-relazzjonijiet tagħhom ma' ulidehom, qabel iż-żwieġ, matul iż-żwieġ u fil-każ tax-xoljiment tiegħu. Dan l-artikolu ma jzommx lill-Istati milli jieħdu dawk il-miżuri li huma meħtieġa fl-interess ta' l-ulied.”.

Żjieda tat-Tielet
Skeda ġdida
ma' l-Att prinċipali.

6. Minnufih wara t-Tieni Skeda li tinsab ma' l-Att prinċipali ghandha tiżdied din it-Tielet Skeda li ġejja:

“It-Tielet Skeda

(Artikolu 4A)

Paragrafi 22 sa 25 tar-Rapport Spjegattiv għas-Seba' Protokoll li hemm mal-Konvenzjoni.

22. Dan l-artikolu jipprovdi li l-kumpens ghandu jithallas lil vittma ta' nuqqas ta' ġustizzja magħmula mill-qorti, taht ċertu kondizzjonijiet.

Fl-ewwel lok, li l-persuna involuta kellha tkun insabet hatja ta' reat kriminali b'deċiżjoni finali u tkun ġarrbet piena bhala riżultat ta' dak is-sejbien ta' htija. Skond it-tifsira li hemm fir-Rapport Spjegattiv tal-Konvenzjoni Ewropea fuq il-Validità Internazzjonali ta' Sentenzi Kriminali, deċiżjoni tkun finali “jekk, skond il-frazi tradizzjonali, tkun dahlet f' ġudikat bhala *res judicata*. Dan huwa l-każ meta din tkun irrevokabbli, jiġifieri meta ebda rimedju iehor ulterjuri ma jkunu disponibbli jew meta l-partijiet ikunu għamli użu shih minn dawk ir-rimedji jew ikunu ppermettew li t-terminu ta' żmien jiskadi mingħajr ma jagħmlu użu minnhom”¹. Isegwi għaldaqstant li sentenza li ma tkunx ta' din ix-xorta ma titqiesx bhala finali sakemm il-liġi domestika tkun tippermetti li l-proċedimenti jkunu jistgħu jergħu jinbdew. Bl-istess mod, dan l-artikolu ma japplikax għal każijiet fejn l-akkużati tiġi miċhuda jew il-persuna akkużata tinheles jew mill-qorti ta' l-ewwel istanza jew, fl-appell, minn tribunal oghla. Jekk, madankollu, f'xi wiehed mill-Istati fejn ikun hemm provdut dwar xi possibilità bhal dik² il-persuna tkun thalliet tappella wara li jkun

¹Kummentarju fuq Artiklu 1a: Rapport Spjegattiv tal-Konvenzjoni Ewropea fuq il-Validità Internazzjonali ta' Sentenzi Kriminali, pubblikazzjoni tal-Kunsill ta' l-Ewropa, 1970, p.22.

²Ara paragrafu 19 ta' l-istess Rapport Spjegattiv li jghid dan li ġej:

“19. F'xi stati, persuna li tkun tixtieq tappella quddiem tribunal oghla ghandha f'ċertu każijiet tapplika biex tithalla tappella. Id-dritt li tirrikorri quddiem tribunal jew xi awtorità amministrattiva biex tithalla tappella ghandu fih innifsu jitqies bhala għamla ta' reviżjoni fil-kuntest tat-tifsira ta' dan l-artikolu”.

skada ż-żmien normali li fih jista' jsir l-appell, u s-sejbien ta' htija tieghu mbaghad tigi rivertita fl-appell, ghaldaqshekk u bla hsara ghall-kondizzjonijiet l-oħra ta' l-artikolu, b'mod partikolari l-kondizzjonijiet deskritti f'paragrafu 24 hawn iktar 'l isfel, jista' japplika l-artikolu.

23. Fit-tieni lok, l-artikolu japplika biss meta s-sejbien ta' htija ta' xi persuna jkun gie rivertit jew inkella dik il-persuna tkun inghatatilha l-mahfra, f'kull każ minhabba li xi fatt ġdid jew xi fatt li jkun għadu kif gie mikxuf ikun juri b'mod konkluziv li kien hemm xi nuqqas ta' ġustizzja magħmula mill-qorti – jiġifieri, xi nuqqas gravi fil-proċess ġudizzjarju li kien jinvolvi xi preġudizzju gravi għall-persuna li tkun insabet hatja. Ghaldaqstant, ma hemm ebda htieġa taht l-artikolu li jithallas xi kumpens jekk dak is-sejbien ta' htija jkun gie rivertit jew tkun inghatat mahfra għal xi raġuni oħra. Lanqas mhu l-każ li l-artikolu jipprova jistabbilixxi xi regoli dwar ix-xorta tal-proċedura li għandha tigi applikata sabiex jiġi stabbilit li kien hemm xi nuqqas ta' ġustizzja magħmula mill-qorti. Din hija materja li għandha tigi ttrattata skond il-liġi domestika jew mill-prattika ta' l-istat inkwistjoni. Il-kliem "jew inkella dik il-persuna tkun inghatatilha l-mahfra" ġew inklużi għaliex taht xi sistemi legali l-mahfra, pjuttost minn proċedimenti legali li jwasslu għar-riverżjoni ta' sejbien ta' htija, tista' f'ċerti każijiet tkun irrimedju adattat wara li jkun hemm deċiżjoni finali.

24. Finalment, ma hemm ebda dritt għal kumpens taht din id-disposizzjoni jekk ikun jista' jintwera li n-nuqqas ta' kxif tal-fatt mhux magħruf fil-hin kien għalkollox jew f'parti minnu attribwibbli għall-persuna li tkun insabet hatja.

25. Fil-każijiet kollha li fihom dawn il-prekondizzjonijiet jiġu sodisfatti, jithallas kumpens "skond il-liġi domestika jew mill-prattika ta' l-istat inkwistjoni." Dan ma jfissirx li ma jithallas ebda kumpens jekk il-liġi jew il-prattika ma jkunux jipprovdu għal kumpens b'hal dak. Ifisser li l-liġi jew il-prattika ta' l-Istat għandhom jipprovdu għall-hlas ta' kumpens f'kull każ fejn l-artikolu jkun japplika. L-intenzjoni hi li l-istati jkunu obbligati jikkompensaw lil persuni biss f'każijiet ċari ta' nuqqas ta' ġustizzja magħmula mill-qorti, fis-sens li jkun hemm rikonoxximent li l-persuna involuta kienet manifestament innoċenti. L-artikolu mhuwiex mahsub li jagħti d-dritt ta' kumpens meta kull prekondizzjoni ma tkunx sodisfatta, per eżempju, meta qorti ta' l-appell tkun invalidat sejbien ta' htija għaliex kienet kixfet xi fatt li jkun dahhal dubju raġonevoli dwar il-htija ta' l-akkużat u li l-imhallet li kien għamel il-ġuri ma kienx ta każha."

7. L-artikolu 4A ta' l-Att principali kif jinsab emendat b'dan l-Att ghandu japplika ghar-rigward ta' kull sejbien ta' htija rivertit qabel id-data tad-dhul fis-sehh ta' dan l-Att jew ta' xi mahfra moghtija qabel dik id-data bhallikieku dik ir-riverzjoni jew mahfra kienu inghataw mal-bidu fis-sehh ta' dan l-Att.

Ghanijiet u Ragunijiet

L-ghan ta' dan l-Abbozz hu sabiex jestendi d-disposizzjonijiet ta' l-Att principali ghad-Drittijiet tal-Bniedem u Libertajiet Fondamentali protetti bir-Raba', s-Sitt u s-Seba' Protokolli li hemm mal-Konvenzjoni.

**A BILL
entitled**

AN ACT to amend the European Convention Act, Cap 319.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:-

1. (1) The short title of this Act is the European Convention (Amendment) Act, 2002. Short title and commencement.

(2) This Act shall be read and construed as one with the European Convention Act, hereinafter referred to as “the principal Act” and shall come into force on such date as the Prime Minister may by notice in the Gazette establish, and different dates may be so established for different purposes and different provisions thereof. Cap. 319.

2. Article 2 of the principal Act shall be amended as follows: Amendment of article 2 of the principal Act.

(a) for the definition “Convention” there shall be substituted the following:

““Convention” means the Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on the 4th November, 1950 and the First, Second, Third, Fourth, Fifth, Sixth and Seventh Protocols thereto signed in Paris on the 20th March 1952, and in Strasbourg on the 6th May 1963, 6th May 1963, 16th September 1963, 20th January

1966, 18th April 1983 and 22nd November 1984, respectively;" and

(b) for the definition "Human Rights and Fundamental Freedoms" there shall be substituted the following:

" "Human Rights and Fundamental Freedoms" means those rights and freedoms as set out in articles 2 to 18 (inclusive) of the Convention and articles 1 to 3 (inclusive) of the First Protocol, articles 1 to 4 (inclusive) of the Fourth Protocol, articles 1 and 2 of the Sixth Protocol and articles 1 to 5 (inclusive) of the Seventh Protocol to the Convention, which articles are reproduced in the First Schedule to this Act;"

Addition of new article 4A to the principal Act.

3. Immediately after article 4 of the principal Act, there shall be added the following new article 4A:

"Special rules applicable in connection with article 3 of the Seventh Protocol to the Convention.

4A. (1) The provisions of paragraphs 22 to 25 (inclusive) of the Explanatory Report on the Seventh Protocol to the Convention reproduced in the Third Schedule to this Act shall apply to the interpretation of the provisions of the following provisions of this article and of article 3 of the Seventh Protocol to the Convention.

(2) The maximum compensation payable under article 3 of the Seventh Protocol to the Convention shall be ten thousand liri. Such compensation shall be fixed by agreement between the party claiming such compensation or failing such agreement by the Civil Court, First Hall, upon an application by the person claiming compensation made within six months of the date when the person's conviction has been reversed or such person has been pardoned.

(3) An appeal from the determination of the compensation by the Civil Court, First Hall, shall lie to the Court of Appeal by application filed within twenty days from the determination of the application by the Civil Court, First Hall."

Substitution of article 7 of the principal Act.

4. For article 7 of the principal Act there shall be substituted the following:

"Transitory provision.

7. No contravention of articles 2 to 18 (inclusive) of the Convention or of articles 1 to 3 (inclusive) of the First Protocol committed before the 30th April 1987 or of articles

1 to 4 (inclusive) of the Fourth Protocol, articles 1 and 2 of the Sixth Protocol or of articles 1 to 5 (inclusive) of the Seventh Protocol committed before the 1st April 2002, shall give rise to an action under article 4 of this Act.”.

5. Immediately at the end of the First Schedule to the principal Act there shall be added the following:

Amendment of
First Schedule
to the principal
Act.

“Articles 1 to 4 of the Fourth Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms.

Article 1 - Prohibition of imprisonment for debt

No one shall be deprived of his liberty merely on the ground of inability to fulfil a contractual obligation.

Article 2 - Freedom of movement

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of *ordre public*, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.

Article 3 - Prohibition of expulsion of nationals

1. No one shall be expelled, by means either of an individual or of a collective measure, from the territory of the State of which he is a national.

2. No one shall be deprived of the right to enter the territory of the state of which he is a national.

Article 4 - Prohibition of collective expulsion of aliens

Collective expulsion of aliens is prohibited.

Articles 1 and 2 of the Sixth Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms.

Article 1 - Abolition of the death penalty

The death penalty shall be abolished. No one shall be condemned to such penalty or executed.

Article 2 - Death penalty in time of war

A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions. The State shall communicate to the Secretary General of the Council of Europe the relevant provisions of that law.

Articles 1 to 5 of the Seventh Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms.

Article 1 - Procedural safeguards relating to expulsion of aliens

1. An alien lawfully resident in the territory of a State shall not be expelled therefrom except in pursuance of a decision reached in accordance with law and shall be allowed:

- a. to submit reasons against his expulsion,
- b. to have his case reviewed, and
- c. to be represented for these purposes before the competent authority or a person or persons designated by that authority.

2. An alien may be expelled before the exercise of his rights under paragraph 1a, b and c of this Article, when such expulsion is necessary in the interests of public order or is grounded on reasons of national security.

Article 2 - Right of appeal in criminal matters

1. Everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal. The exercise of this right, including the grounds on which it may be exercised, shall be governed by law.

2. This right may be subject to exceptions in regard to offences of a minor character, as prescribed by law, or in cases in which the person concerned was tried in the first instance by the highest tribunal or was convicted following an appeal against acquittal.

Article 3 - Compensation for wrongful conviction

When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed, or he has been pardoned, on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to the law or the practice of the State concerned, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

Article 4 - Right not to be tried or punished twice

1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.

2. The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.

3. No derogation from this Article shall be made under Article 15 of the Convention.

Article 5 - Equality between spouses

Spouses shall enjoy equality of rights and responsibilities of a private law character between them, and in their relations with

their children, as to marriage, during marriage and in the event of its dissolution. This Article shall not prevent States from taking such measures as are necessary in the interests of the children.”.

Addition of
new Third
Schedule to the
principal Act.

6. Immediately after the Second Schedule to the principal Act there shall be added the following Third Schedule:

“Third Schedule

(Article 4A)

Paragraphs 22 to 25 of the Explanatory Report to the Seventh Protocol to the Convention.

22. This article provides that compensation shall be paid to a victim of a miscarriage of justice, on certain conditions.

First, the person concerned has to have been convicted of a criminal offence by a final decision and to have suffered punishment as a result of such conviction. According to the definition contained in the Explanatory Report of the European Convention on the International Validity of Criminal Judgements, a decision is final “if, according to the traditional expression, it has acquired the force of *res judicata*. This is the case when it is irrevocable, that is to say when no further ordinary remedies are available or when the parties have exhausted such remedies or have permitted the time-limit to expire without availing themselves of them”¹. It follows therefore that a judgement by default is not considered as final as long as the domestic law allows the proceedings to be taken up again. Likewise, this article does not apply in cases where the charge is dismissed or the accused person is acquitted either by the court of first instance or, on appeal, by a higher tribunal. If, however, in one of the States in which such a possibility is provided for² the person has been granted leave to appeal after the normal time of appealing has expired, and his conviction is then reversed on appeal, then subject to the other conditions of the article, in particular the conditions described in paragraph 24 below, the article may apply.

¹Commentary on Article 1a: Explanatory Report of the European Convention on the International Validity of Criminal Judgements, publication of the Council of Europe, 1970, p.22.

²See paragraph 19 of the same of the same Explanatory Report which reads as follows:

“19. In some states, a person wishing to appeal to a higher tribunal must in certain cases apply for leave to appeal. The right to apply to a tribunal or an administrative authority for leave to appeal is itself to be regarded as a form of review within the meaning of this article”.

23. Secondly, the article applies only where the person's conviction has been reversed or he has been pardoned, in either case on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice - that is, some serious failure in the judicial process involving grave prejudice to the convicted person. Therefore, there is no requirement under the article to pay compensation if the conviction has been reversed or a pardon has been granted on some other ground. Nor does the article seek to lay down any rules as to the nature of the procedure to be applied to establish a miscarriage of justice. This is a matter for the domestic law or practice of the state concerned. The words "or he has been pardoned" have been included because under some systems of law pardon, rather than legal proceedings leading to the reversal of a conviction, may in certain cases be the appropriate remedy after there has been a final decision.

24. Finally, there is no right to compensation under this provision if it can be shown that the non-disclosure of the unknown fact in time was wholly or partly attributable to the person convicted.

25. In all cases in which these preconditions are satisfied, compensation is payable "according to the law or the practice of the state concerned." This does not mean that no compensation is payable if the law or practice makes no provision for such compensation. It means that the law or practice of the state should provide for the payment of compensation in all cases to which the article applies. The intention is that states would be obliged to compensate persons only in clear cases of miscarriage of justice, in the sense that there would be acknowledgement that the person concerned was clearly innocent. The article is not intended to give a right of compensation where all the preconditions are not satisfied, for example, where an appellate court has quashed a conviction because it had discovered some fact which introduced a reasonable doubt as to the guilt of the accused and which had been overlooked by the trial judge."

7. Article 4A of the principal Act as amended by this Act shall apply with regard to any conviction reversed before the date of coming into force of this Act or a pardon granted before such date as if such reversal or pardon was given on the coming into force of this Act.

Transitory
provision.

Objects and Reasons

The object of this bill is to extend the provisions of the principal Act to the Human Rights and Fundamental Freedoms protected by the Fourth, Sixth and Seventh Protocols to the Convention.

