

CHAPTER 319**EUROPEAN CONVENTION ACT**

To make provision for the substantive Articles of the European Convention for the Protection of Human Rights and Fundamental Freedoms, to become and be, enforceable as, part of the Law of Malta.

19th August, 1987

ACT XIV of 1987, as amended by Acts XXI of 2002 and IX of 2006; and Legal Notice 424 of 2007.

1. The short title of this Act is the European Convention Act.

Short title.

2. In this Act, unless the context otherwise requires -

Interpretation.
Amended by:
XXI. 2002.2.

"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;

"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;

"ordinary law" means any instrument having the force of law and any unwritten rule of law, other than the Constitution of Malta;

"person" includes any physical person, non-governmental organization or group of individuals.

3. (1) The Human Rights and Fundamental Freedoms shall be, and be enforceable as, part of the Law of Malta.

Enforcement of
Convention.

(2) Where any ordinary law is inconsistent with the Human Rights and Fundamental Freedoms, the said Human Rights and Fundamental Freedoms shall prevail, and such ordinary law, shall, to the extent of the inconsistency, be void.

(3) The Human Rights and Fundamental Freedoms shall be enforceable subject to the Declaration and Reservations made by the Government of Malta on the signing of the Convention on the 12th day of December, 1966, which Declaration and Reservations are reproduced in the Second Schedule to this Act.

(4) The Constitutional Court shall in addition to the jurisdiction conferred on it by article 95 of the Constitution, have jurisdiction to hear and determine all appeals under this Act and exercise all such powers as are conferred on it by this Act.

Procedure for enforcement of Human Rights and Fundamental Freedoms.

4. (1) Any person who alleges that any of the Human Rights and Fundamental Freedoms, has been, is being or is likely to be contravened in relation to him, or such other person as the Civil Court, First Hall, in Malta may appoint at the instance of any person who so alleges, may, without prejudice to any other action with respect to the same matter that is lawfully available, apply to the Civil Court, First Hall, for redress.

(2) The Civil Court, First Hall, shall have original jurisdiction to hear and determine any application made by any person in pursuance of subarticle (1), and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement, of the Human Rights and Fundamental Freedoms to the enjoyment of which the person concerned is entitled:

Provided that the court may, if it considers it desirable so to do, decline to exercise its powers under this subarticle in any case where it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other ordinary law.

(3) If any proceedings in any court other than the Civil Court, First Hall, or the Constitutional Court any question arises as to the contravention of any of the Human Rights and Fundamental Freedoms, that court shall refer the question to the Civil Court, First Hall, unless in its opinion the raising of the question is merely frivolous or vexatious; and that court shall give its decision on any question referred to it under this subarticle and, subject to the provisions of subarticle (4), the court in which the question arose shall dispose of the question in accordance with that decision.

(4) Any party to proceedings brought in the Civil Court, First Hall, in pursuance of this article shall have a right of appeal to the Constitutional Court.

(5) No appeal shall lie from any determination under this article that any application or the raising of any question is merely frivolous or vexatious.

(6) The Rules of Court made in accordance with article 46(7) of the Constitution as in force from time to time shall apply *mutatis mutandis* to the practice and procedure of the courts for the purpose of this article as if the proceedings made under this article were proceedings made under article 46 of the Constitution.

(7) Where it is alleged that any of the Human Rights and Fundamental Freedoms and any of the provisions of articles 33 to 45 (inclusive) of the Constitution has been, is being or is likely to be contravened, the demand for redress or the reference to the Civil Court, First Hall, in accordance with article 46 of the Constitution and this article may be made in the same application or reference.

(8) Where an application for redress or any reference to the Civil Court, First Hall, made after the 30th April, 1987 is made exclusively either under article 46 of the Constitution or under this article and is still pending before the Civil Court, First Hall, or the Constitutional Court, the court may examine whether or not the

facts complained of are in violation of the corresponding Human Rights and Fundamental Freedoms, in the first case, or of the corresponding Fundamental Rights and Freedoms of the Individual enforceable under the Constitution, in the second case; and if the court so finds it may order accordingly the redress it may deem appropriate under any of the aforesaid laws.

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.

Special rules applicable in connection with article 3 of the Seventh Protocol to the Convention.
Added by:
 XXI. 2002.3.
Amended by:
 L.N. 424 of 2007.

(2) The maximum compensation payable under article 3 of the Seventh Protocol to the Convention shall be twenty-three thousand and two hundred and ninety-three euro and seventy-three cents (23,293.73). 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.

5. No person shall be hindered in the exercise of his right to petition the Secretary-General of the Council of Europe in accordance with the provisions of Article 25 of the Convention and of all the Articles of the said Convention related thereto.

Right of individual petition.

6. (1) Any judgment of the European Court of Human Rights to which a declaration made by the Government of Malta in accordance with Article 46 of the Convention applies, may be enforced by the Constitutional Court in Malta, in the same manner as judgments delivered by that court and enforceable by it, upon an application filed in the Constitutional Court and served on the Attorney General containing a demand that the enforcement of such judgment be ordered.

Enforcement of the decisions of the European Court of Human Rights.

(2) Before adjudging upon any such demand the Constitutional Court shall examine if the judgment of the European Court of Human Rights sought to be enforced, is one to which a declaration as is referred to in subarticle (1) applies.

(3) The Constitutional Court shall order the enforcement of a judgment referred to in this article if it finds that such judgment is one to which a declaration referred to in subarticle (2) applies.

6A. Where by a final judgment in a case against Malta the European Court of Human Rights finds that any instrument having the force of law in Malta or any provision thereof is inconsistent with the Human Rights and Fundamental Freedoms, the Prime Minister may, within the period of six months from the date that the judgment becomes final and to the extent necessary in his opinion

Power of Minister to make regulations.
Added by:
 IX. 2006.2.

to remove the inconsistency, make regulations deleting any such instrument or provision found to be inconsistent as aforesaid.

Transitory
provision.
Substituted by:
XXI. 2002.4.

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.

Amended by:
XXI. 2002.5.

FIRST SCHEDULE

[Article 2]

Articles 2 to 18 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

ARTICLE 2

(1) Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

(2) Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

ARTICLE 3

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

ARTICLE 4

(1) No one shall be held in slavery or servitude.

(2) No one shall be required to perform forced or compulsory labour.

(3) For the purpose of this Article the term "forced or compulsory labour" shall not include:

- (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditioned release from such detention;
- (b) any service of a military character or, in case of conscientious objectors in countries where they are

- recognised, service exacted instead of compulsory military service;
- (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
 - (d) any work or service which forms part of normal civil obligations.

ARTICLE 5

(1) Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

- (a) the lawful detention of a person after conviction by a competent court;
- (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
- (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authorities on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
- (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
- (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
- (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

(2) Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

(3) Everyone arrested or detained in accordance with the provisions of paragraph (1)(c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

(4) Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

(5) Everyone who has been the victim of arrest or detention in

contravention of the provisions of this Article shall have an enforceable right to compensation.

ARTICLE 6

(1) In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

(2) Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

(3) Everyone charged with a criminal offence has the following minimum rights:

- (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
- (b) to have adequate time and facilities for the preparation of his defence;
- (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
- (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

ARTICLE 7

(1) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

(2) This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

ARTICLE 8

(1) Everyone has the right to respect for his private and family life, his home and his correspondence.

(2) There shall be no interference by a public authority with

the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

ARTICLE 9

(1) Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

(2) Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

ARTICLE 10

(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

ARTICLE 11

(1) Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

(2) No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the Armed Forces, of the Police or of the administration of the State.

ARTICLE 12

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the

exercise of this right.

ARTICLE 13

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

ARTICLE 14

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

ARTICLE 15

(1) In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

(2) No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.

(3) Any High Contracting Party availing itself of this right of derogation shall keep the Secretary-General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary-General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.

ARTICLE 16

Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

ARTICLE 17

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.

ARTICLE 18

The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

Articles 1 to 3 of the First Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms.

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 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 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.

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 1 a, 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.

SECOND SCHEDULE

[Article 3]

DECLARATION AND RESERVATIONS MADE BY THE
GOVERNMENT OF MALTA WHEN SIGNING THE CONVENTION
AND PROTOCOL
(12 DECEMBER 1966)

1. Declaration of interpretation

The Government of Malta declares that it interprets paragraph 2 of Article 6 of the Convention in the sense that it does not preclude any particular law from imposing upon any person charged under such law the burden of proving particular facts.

2. The Government of Malta, having regard to Article 64 of the Convention, and desiring to avoid any uncertainty as regards the application of Article 10 of the Convention declares that the Constitution of Malta allows such restrictions to be imposed upon public officers in regard to their freedom of expression as are reasonably justifiable in a democratic society. The code of conduct of public officers in Malta precludes them from taking an active part in political discussions or other political activity during working hours or on official premises.

3. The Government of Malta, having regard to Article 64 of the Convention, declares that the principle of lawful defence admitted under sub-paragraph (a) of paragraph (2) of Article 2 of the Convention shall apply in Malta also to the defence of property to the extent required by the provisions of paragraphs (a) and (b) of article 224* of the Criminal Code of Malta, the text whereof, along with the text of the preceding article 223*, is as follows:

Cap. 9.

“*223. No offence is committed when a homicide or a bodily harm is ordered or permitted by law or by a lawful authority, or is imposed by actual necessity either in lawful self defence or in the lawful defence of another person.

*224. Cases of actual necessity of lawful defence shall include the following:

- (a) where the homicide or bodily harm is committed in the act of repelling, during the night-time the scaling or breaking of enclosures, walls, or the entrance doors of any house or inhabited apartment, or of the appurtenances thereof having a direct or an indirect communication with such house or apartment;
- (b) where the homicide or bodily harm is committed in the act of defence against any person committing theft or plunder, with violence, or attempting to commit such theft or plunder;
- (c) where the homicide or bodily harm is imposed by the actual necessity of the defence of one's own chastity or of the chastity of another person.”

4. The Government of Malta, having regard to Article 64 of the Convention, declares that the principle affirmed in the second sentence of Article 2 of the Protocol is accepted by Malta only in so far as it is compatible with the provision of efficient instruction and training, and the avoidance of unreasonable public expenditure, having regard to the fact that the population of Malta is overwhelmingly Roman Catholic.

*The relevant articles 223 and 224 of the Criminal Code (Cap. 9) originally referred to in the text as articles 237 and 238 respectively, have been renumbered by virtue of the Statute Law Revision Act, 1980.

THIRD SCHEDULE

Added by:
XXI. 2002.6.

(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"^{*}. 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 for[†] 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.

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

^{*}Commentary 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.

[†]See paragraph 19 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".

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.
