

**EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL
FREEDOMS: INDIVIDUAL RIGHT TO PETITION**

**Lodged au Greffe on 25th June 2002
by the Policy and Resources Committee**



STATES OF JERSEY

STATES GREFFE

150

2002

P.110

Price code: A

PROPOSITION

THE STATES are asked to decide whether they are of opinion -

to request the Bailiff to inform the Lord Chancellor that it is their wish that a declaration be made extending to the Bailiwick, for an indefinite period, with effect from 14th January 2001, the right of individual petition to the European Court of Human Rights, under Article 56(4) of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

POLICY AND RESOURCES COMMITTEE

Report

Her Majesty's Government ratified the Convention for the Protection of Human Rights and Fundamental Freedoms ('the Convention') on 8th March 1951, subject to reservations, inter alia, in respect of what was Article 25 (now Article 34) which gave an individual the right to petition the European Commission of Human Rights ('the Commission').

This Article was one of those known as the "optional clauses". They were so described because they did not automatically apply to a country which is party to the Convention. These Articles applied only if such a country made further declarations under Article 25 recognising the right of an individual, an organisation, or a group of individuals to present a petition to the Commission in respect of acts of that country. A country was permitted to make a declaration for a specified period.

Initially, Her Majesty's Government did not make such a declaration, and thus did not recognise the competence of the Commission to receive petitions from individuals, organisations or groups.

The U.K. ratification of the Convention was extended to the Bailiwick in 1953, following consultation with the Insular Authorities, subject to the same reservations as had been made by Her Majesty's Government on ratification of the Convention. This action was authorised by Act of the States dated 30th October 1951.

In 1966, the United Kingdom made declarations under Article 25 recognising, initially for a three-year period, the right of individual petition. The declaration was regularly renewed for different periods of time. From 1966, on each occasion when Her Majesty's Government renewed its declaration, the States were asked whether it was their wish that a declaration recognising the procedures under Article 25 should be made on behalf of Jersey, but the States declined on the basis that they wished to learn from the United Kingdom experience. In 1976 the United Kingdom Government, for the first time, made a declaration for a five-year period and invited the States to reconsider their position. On 30th July 1976, at the request of the States, Her Majesty's Government made a declaration on Jersey's behalf recognising the right of petition under Article 25. This declaration was renewed in 1981, 1986, 1991 and 1996 (see, in particular propositions P.13/91 and P.187/95). The States' most recent decision in this matter was made on 16th January 1996 and the new declaration was therefore due for renewal early in 2001. The date for the renewal was, unfortunately, overlooked and the right of individual petition has lapsed.

In the meantime, the Convention has been amended by Protocol 11, which was ratified on the Island's behalf, during 1995. Amongst other amendments, the Protocol established the permanent single Court of Human Rights, which sits as committees, chambers and grand chamber, replacing, or more accurately, merging the Commission and the Court of Human Rights.

The Protocol also replaced the "optional" right of individual petition in Article 25 with an automatic and permanent right, in the new Article 34 of the Convention. However, the new Article applies only to the Member States of the Council of Europe which are parties to the Convention. It does not apply to the so-called non-metropolitan territories of those States, in respect of which those States have declared that the Convention will apply. This, of course, includes the Channel Islands and the Isle of Man. Therefore, it remains necessary for a periodic declaration of the renewal of the right to be made, in respect of the Islands. The declaration is now made under Article 56(4) of the Convention.

The Lord Chancellor's Department has recently written to H.E. the Lieutenant Governor, regretting the oversight and asking whether the Insular Authorities would agree to a further declaration of the right of individual petition being made on their behalf for a five-year period, backdated to 14th January 2001.

The Insular Authorities responded by asking the Lord Chancellor's department whether it would be possible for a further declaration to be indefinite, rather than limited to a specific period. Clearly, it is right not only that a further declaration should be made but also that it should be indefinite, in view of the fact that the right of individual petition now applies permanently in the United Kingdom. The Lord Chancellor's department has recently confirmed that an indefinite declaration is possible and the Policy and Resources Committee therefore recommends to the States that a further declaration, backdated as suggested, should be made on Jersey's behalf, recognising for an indefinite period, the right of individual petition, to the European Court of Human Rights, under Article 56(4) of the Convention.

This proposition has no implications for the financial or manpower resources of the States.