

MEMORANDUM TO CABINET BY THE MINISTER OF COMMONWEALTH
AND FOREIGN AFFAIRS AND BY THE MINISTER OF JUSTICE

European Convention for the Protection of Human Rights
and Fundamental Freedoms and Protocols thereto

1. The European Convention for the Protection of Human Rights and Fundamental Freedoms is the most important Convention passed by the Council of Europe and has been ratified by all member States of the Council except France, Switzerland and Malta.

2. The Crown Advocate General feels that in view of the substantial divergencies between certain provisions of the Malta Constitution and the corresponding provisions of the Convention, Malta cannot accede to the fourth Protocol to the Convention and can only accede to the Convention and the other Protocols if it makes two Reservations and one Declaration of interpretation in regard to the Convention itself, and one Reservation in regard to the first Protocol to the Convention.

3. The Crown Advocate General also observes that any reservations made under the Convention are very limited in their scope, since a reservation can only be made under article 64 of the Convention:

- (a) in respect of a particular provision of the Convention, and
- (b) to the extent only that any law in force in the territory at the time of the signing of the Convention is not in conformity with that provision.

Consistently with such limitations, reservations of a general character are not permitted and any reservation is to contain a brief statement of the law concerned.

4. A brief summary of the Convention, intended solely as a general guide for Ministers, is attached to this memorandum as Annex I.

5. The provisions of the Convention and Protocols which call for particular attention, are reproduced verbatim in Annexes II, III and IV to this memorandum, along with the comments of the Crown Advocate General and, where appropriate, with the text of the Reservation or Declaration

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which the Crown Advocate General proposes should be made at the time of signing the Convention. Annex II covers the main articles of the Convention which call for comment - with the exception of articles 25 and 46, which deal with the questions of individual petition and compulsory jurisdiction of the Court of Human Rights; and which articles are covered specifically by Annex IV. The third Annex deals with the five Protocols to the Convention.

6. Hon. Ministers are invited to agree that Malta should become a signatory to the European Convention for the Protection of Human Rights and Fundamental Freedoms, and that it should sign the first, second, third and fifth (but not the fourth) Protocols, subject to the Reservations and the Declaration shown in the third column of the Annexes.

7. Hon. Ministers are also invited to decide whether to admit the right of individual petition under article 25 of the Convention, and whether to recognise the compulsory jurisdiction of the European Court of Human Rights under article 46 of the Convention.

21st June, 1966.

BRIEF SUMMARY OF THE MAIN PROVISIONS OF THE EUROPEAN
CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS
AND FUNDAMENTAL FREEDOMS

Section I (articles 1 - 18)

This section sets out the various human rights and fundamental freedoms enshrined in the Convention and makes provision enabling a High Contracting Party to take measures derogating from its obligations under the Convention in certain circumstances.

Section II (article 19)

Establishes the European Commission of Human Rights and the European Court of Human Rights.

Section III (articles 20 - 37)

Provides for the appointment of members of the Commission of Human Rights (Malta will have the right to appoint one member, when it signs the Convention) and sets out the procedure whereby any alleged breach of the Convention may be referred to the Commission by Contracting Parties, and (where a State has accepted the right of individual petition) petitions may be received from any persons, non-Governmental organizations or individuals claiming to be a victim of a violation of the rights in the Convention.

The Commission may:

- (i) attempt to secure a friendly settlement between the parties concerned;
- (ii) if a solution is not reached, transmit a report to the Committee of Ministers with such proposals as it thinks fit, and the Committee of Ministers shall decide by two-thirds majority whether there has been a violation of the Convention and if so prescribe measures to be taken by the High Contracting Party.
- (iii) refer the question to the Court of Human Rights, if the parties to the dispute have accepted its 'ipso facto' compulsory jurisdiction or if they accept it in regard to the particular point at issue.

Section IV (articles 38 - 56)

Provides for the appointment of members of the Court of Human Rights (Malta already has one Judge out of the eighteen) the procedure for considering cases brought before the Court (only a High Contracting Party or the Commission has a right to bring cases before the Court).

Under article 46 any High Contracting Party may at any time declare that it recognises as compulsory the jurisdiction of the Court in all matters concerning the interpretation and application of the Convention. The judgement of the Court is final and High Contracting Parties undertake to abide by the decision of the Court in any case to which they are Parties.

Section V (articles 57 - 66)

Deals with the expenses of the Commission and of the Court. It also covers the making of reservations in respect of any particular provision of the Convention and deals with other miscellaneous provisions.

Protocol to the Convention

The first Protocol adds certain rights and freedoms omitted from the original Convention including:

- (i) Peaceful enjoyment of possessions;
- (ii) Right to education. The State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions;
- (iii) Holding of free elections by secret ballot.

Protocol No. 2

Confers upon the Court of Human Rights the competence to give advisory opinions subject to certain conditions.

Protocol No. 3

Amends the procedure of the European Commission of Human Rights.

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Protocol No. 4

Adds certain rights to the Convention by excluding the deprivation of liberty for inability to fulfil contractual obligations, and by re-asserting the right to freedom of movement within a State and freedom to leave any country. It also provides that no one shall be expelled from, or prevented from entering the State of which he is a national.

Protocol No. 5

Amends the Convention in regard to the terms of office of members of the Commission and of the Court of Human Rights.

EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS
AND FUNDAMENTAL FREEDOMS

Articles of the Convention

Crown Advocate-General's Comments

Reservations and Declarations
suggested by Crown Advocate General

Protection of right to life
(Article 2 of the Convention)

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.

Both the Convention and our Constitution affirm in the most emphatic manner the individual's right to have his life protected by law. But the derogations to such principle go further in our Constitution and in our Criminal Code than it is permissible under the Convention.

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.

A fundamental divergence emerges in regard to cases of lawful defence in that, while the Convention admits it only "in defence of any person from unlawful violence", our Constitution extends the concept to "the defence of property". Moreover, while the killing of a person under the Convention is considered as a case of lawful defence "when it results from the use of force which is no more than absolutely necessary", in our Constitution there is a case of lawful defence when a person dies "as the result of the use of force to such extent as is reasonably justifiable in the circumstances of the case". Section 238 of our Criminal Code admits lawful defence in

"cases of actual necessity" and the said words "reasonably justifiable" used in our Constitution seem to be intended to cover the interpretation which our Courts normally give to this provision of the Criminal Code when applying it to concrete cases.

The Constitution's extension of the concept of lawful defence to the "defence of property" must have been likewise intended to cover the cases of lawful defence admitted under paragraphs (a) and (b) of the said section 238 of our Criminal Code, namely "where the homicide.....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 apartments thereof having a direct or an indirect communication with such house or apartment" or "where the homicide.....is committed in the act of defence against any person committing theft or plunder, with violence, or attempting to commit such theft or plunder". But our Constitution seems to go further than required by our Criminal Code when it justifies the killing of a person as the result of the use of force, (always "to such extent as is reasonably justifiable in the circumstances of the case"), "in order to prevent the commission by that person of a criminal offence".

The fact that the basis of a lawful defence ("legittima difesa") is absolute necessity in the Convention and actual necessity in our Criminal Code does not, in the opinion of the Crown Advocate General render necessary a reservation in this respect since there cannot be various degrees of necessity and the said two terms pre more or less

equivalent, the wording used in the European Convention, being intended to emphasize that the principle of the protection of the individual's right to life can only be derogated in really exceptional circumstances. A reservation will, however, have to be made in regard to the extension of the right of lawful defence ("legittima difesa") to the defence of property.

By acceding to the Convention, the Government of Malta will be containing and restricting its power to legislate in respect of "lawful defence" and of the "lawful deprivation of the individual's life" within the limits established by the Convention, even though our Constitution may allow, as in fact it does, a wider scope for such legislation.

Reservation:-
 "The Government of Malta declares that the principle of lawful defence admitted under subparagraph (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 section 238 of the Criminal Code of Malta, the text whereof is attached hereto".

Protection from forced labour
 (Articles 4 and 15 of the Convention).

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:

Our Constitution affords the same protection from "forced labour" as is afforded by the Convention, except where derogations are concerned. The Convention (article 3 (c)) does not consider as "forced labour" "any service exacted in case of an emergency or calamity threatening the life or well-being of the community", that is to say, the Convention only justifies "forced labour" when there is inherent in the emergency the said

- (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 conditional 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 civic obligations

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 4 (paragraph 1) and 7 shall be made under this provision.

threat. Our Constitution goes much further than that, since "a period of public emergency" for the purpose of the imposition of "forced labour", may be declared by the Governor-General and endorsed by the House of Representatives; under section 48(2) (b), (3) (a) (b) (c) of the Constitution, even where the situation is not so extreme as to constitute a threat "to the life or well-being of the community".

Another important point is that the Convention, even in the case of the public emergency, allows the derogation to the principle of "no forced labour" "to the extent strictly required by the exigencies of the situation" (article 15 (1) of the Convention).

By signing the Convention, the Government will be restricting its power to impose "forced labour" to the cases of public emergency envisaged in the Convention, namely, where there is a threat to the life or well-being of the community, and, if Government is to honour the Convention, it will be undertaking not to exercise its wider powers allowed by the Constitution. Moreover, in pursuance of the Convention, it will have to use such powers "to the extent strictly required by the exigencies of the situation". (The Crown Advocate General wishes the Government to be fully aware of these limitations imposed through accession to the Convention.)

(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.

Protection from Arbitrary Arrest or Detention)

(Article 5 of the Convention)

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 fulfillment 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

Both the Convention and our Constitution admit derogation to the fundamental right under this heading in the case of a public emergency. Here, the concept of "public emergency" in our Constitution is not wider than that in the Convention, since the public emergency which may be proclaimed by the Governor-General under section 48 (2) (b) of the Constitution is not one which would justify a derogation to the right under reference (see section 35(5) of the Constitution). But here, again, while the Convention concedes the derogation "to the extent strictly required by the exigencies of the situation", our Constitution concedes the derogation in respect of measures "that are reasonably justifiable for the purpose of dealing with the situation that exists during the period of public emergency".

legal authority 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 (e) 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.

On signing the Convention, our Government will be binding itself to go by the Yardslick of the Convention and not by that of the Constitution which allows a greater discretion.

The Convention does not contain a provision corresponding to paragraph (c) of subsection (1) of section 35 of our Constitution, where the arrest or detention of a person is admitted "in the execution of the Order of the House of Representatives punishing him for contempt of itself or of its members or for breach of privilege". But since the House of Representatives, when giving any such order, will be exercising a function very similar to the judicial function, the Crown Advocate General thinks that paragraphs (a) and (b) of article 5 of the Convention may be interpreted to cover similar orders.

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.

Presumption of innocence of Accused Person
(Article 6 (2) of the Convention)

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

The Convention lays down in this respect that "everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law". Our Constitution reproduces substantially the same provision, under subsection (5) of section 40, but it contains the following " proviso", which may be considered as weakening to a certain extent, the principle under reference:-

"Provided that nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this subsection to the extent that the law in question imposes upon any person charged as aforesaid the burden of proving particular facts".

The above "provisio" is of great

importance in the system of our legislation since we have several laws, (some of them fiscal laws), which make use of it and sometimes we may need it. The Crown Advocate General does not propose that Malta should make any reservation in respect of it, since such reservation would preclude us from using the proviso in future legislation. But the Crown Advocate General recommends that a declaration should be made whereby it will be stated that the Government of Malta interprets Article 6 (2) 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."

Declaration:-
"The Government of Malta interprets paragraph 2 of Article 6 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".

Protection of Freedom of Thought,
Conscience and Religion

(Article 9 of the Convention)

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

While the Convention in particular circumstances allows derogations which are "necessary in a democratic society", our Constitution allows in the same circumstances derogations which "are reasonably required" and "are reasonably justifiable in a democratic society". The Crown Advocate General does not think that this renders necessary any reservation, but thinks that, once our Government will have signed the Convention, the terms "reasonably required" and "reasonably justifiable in a democratic society" will have to be considered in the light of "necessity".

protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Protection of Freedom of Expression
(Article 10 of the Convention)

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.

Both the Convention and our Constitution contain derogations to this fundamental right, with the difference that, while the Convention allows such derogations to the extent that they "are necessary in a democratic society" our Constitution allows them to the extent that they are "reasonably justifiable in a democratic society". What the Crown Advocate General has said in this respect with regard to the protection of thought, conscience and religion applies also here. Moreover, our Constitution (section 42 (2)(b)) allows in regard to this fundamental right, always to the said extent, the imposing of restrictions upon public officers. There is not in the Convention a corresponding derogation and Malta will, therefore, have to make a reservation in order to save existing laws and regulations. But Malta would be precluded from making any other laws or regulations "imposing restrictions upon public officers" in regard to the freedom of expression, after it will have signed the Convention

Reservation:

"The Government of Malta declares in connection with article 10 of the Convention 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 matters and also precludes them from indulging in political discussions or other political activity during working hours or on official premises".

The only restrictions which are imposed upon public officers within this field of human rights are contained in Estacode which imposes upon certain categories of public officers the obligation to maintain a reserve in political matters and abstain from any public manifestation of their views which might associate them prominently with any political party and precludes all public officers in whatever grade from indulging in political discussions or any other political activity during working hours or on official premises (Estacode 7.1.7.2. and 7.1.7.5.)

Protection of Freedom of Assembly and Association

(Article 11 of the Convention)

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

Also here, derogations under the Convention are allowed in so far as they are necessary in a democratic society, while under the Constitution they are allowed in so far as they are "reasonably required" and are "reasonably justifiable in a democratic society".

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.

Protocol to the ConventionArticle 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.

The decision as to the signing of this Protocol is entirely one of policy. The Crown Advocate General would particularly draw the attention of the Government to that part of Article 1 which lays down that "No one shall be deprived of his possession except in the public interest and subject to the conditions provided for by law and by the general principles of international law". Particular problems facing Malta (Drydocks) should be kept in view in arriving at a decision.

Article 2 of the Protocol raises also a very delicate question with us where it provides that "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".

Reservation: (in the event of Government deciding to sign the Protocol).

"At the time of the signing of the present Protocol, the Government of Malta declares that, in view of the fact that the population of Malta is overwhelmingly Roman Catholic, the principle affirmed in the second sentence of article 2 is accepted by Malta only in so far as it

is compatible with the provision of efficient instruction and training, and the avoidance of unreason-able public expenditure".

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.

Article 3 of the Protocol raises no problems for us since it affirms the principle of the holding of periodical free elections by secret ballot.

Protocol No. 2

In the opinion of the Crown Advocate General Malta may sign this Protocol, which confers upon the European Court of Human Rights competence to give advisory opinions, at the request of the Committee of Ministers, on legal questions concerning the Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto.

Protocol No. 3

This Protocol amends certain provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the procedure of the European Commission of Human Rights. Government may sign it, of course, if it signs the Convention.

Protocol No. 4

Article 1

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

The signing of this Protocol by Malta would entail such reservation that the Crown Advocate General thinks it is advisable not to

sign it at all.

Article 1 of this Protocol lays down that "no one shall be deprived of his liberty merely on the ground of inability to fulfil a contractual obligation". Our warrant of imprisonment for debt (section 358 et seq. of the Code of Organisation and Civil Procedure) stands squarely against the provision of this article, and the Crown Advocate General here points out that an attempt which was made in December, 1963 to abolish personal arrest for debt had to be abandoned because of the opposition it met in our House of Representatives and the relative Bill (see page C.224 of Government Gazette of 1963) was allowed to lapse.

Article 3

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.

Paragraph 2 of Article 3 of this Protocol lays down that "No one shall be deprived of the right to enter the territory of the State of which he is a national". As against this, section 45 (3)(b) of our Constitution allows the imposition of restrictions on the freedom of movement (and, consequently, of entry into Malta) of any citizen of Malta who is not such a citizen by virtue of section 23(1) or 26(1) of the Constitution. But what assumes particular importance in this respect is section 38 of the Immigration (British subjects) Ordinance, 1948, which empowers the Governor-General in his absolute discretion to prohibit the entry into Malta of any person who, in the opinion of the Governor-General, is not provided

with suitable accommodation in Malta. This provision of the Ordinance is kept in force from year to year by Proclamation and may be so kept in force until the 20th September, 1967 (see section 48(7) of the Constitution). The Crown Advocate-General has already advised against the signing of Protocol No.4 because of article 1 (see above); the objections he raises in regard to Article 3 is a further reason for not signing it.

This Protocol contains certain amendments to the Convention relating to the terms of office of the members of the European Commission of Human Rights and of the European Court of Human Rights.

Our Government may sign this, of course, if it signs the Convention.

THE EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS
AND FUNDAMENTAL FREEDOMS

(1) article 25 - Right of Individual Petition; (11) article
46 - Jurisdiction of Court of Human Rights

Article 25

1. The Commission may receive petitions addressed to the Secretary-General of the Council of Europe from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in this Convention, provided that the High Contracting Party against which the complaint has been lodged has declared that it recognises the competence of the Commission to receive such petitions. Those of the High Contracting Parties who have made such a declaration undertake not to hinder in any way the effective exercise of this right.

2. Such declarations may be made for a specific period.

3. The declarations shall be deposited with the Secretary-General of the Council of Europe who shall transmit copies thereof to the High Contracting Parties and publish them.

4. The Commission shall only exercise the powers provided for in this Article when at least six High Contracting Parties

It is for the Government to decide whether it is to make a declaration under article 25 of the Convention to the effect that it recognises the competence of the European Commission of Human Rights to receive individual petitions from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in this Convention. It may be added that article 26 of the Convention provides that "the Commission may only deal with the matter after all domestic remedies have been exhausted".

The declaration may be made for a specified period, which may be regarded as a sort of an experimental period. To date, eleven countries have made the declaration (Austria, Belgium, Denmark, Germany, Iceland, Ireland, Luxembourg, Netherlands, Norway, Sweden and the United Kingdom). The United Kingdom, which made the declaration on the 14th January, 1966, made it for an initial period of three years. The opinion of the Crown

Note: If no declaration is made by the Government under article 25, the provisions of this article of the Convention would not apply to Malta.

are bound by declarations made in accordance with the preceding paragraphs.

Article 46

1. Any of the High Contracting Parties may at any time declare that it recognises as compulsory *ipso facto* and without special agreement the jurisdiction of the Court in all matters concerning the interpretation and application of the present Convention.

2. The declarations referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain other High Contracting Parties or for a specified period.

3. These declarations shall be deposited with the Secretary-General of the Council of Europe who shall transmit copies thereof to the High Contracting Parties.

Advocate General is that our Government should not rush into this declaration.

Article 46 of the Convention concerns the compulsory recognition of the jurisdiction of the European Court of Human Rights and it provides that "any of the High Contracting Parties may at any time declare that it recognises as compulsory *ipso facto*" and without special agreement the jurisdiction of the Court in all matters concerning the interpretation and application of the present Convention".

The declaration under article 46 may be made on the condition of reciprocity or for a specified period. Ten countries have made this declaration. They are the countries listed above without Sweden. The Crown Advocate General's opinion here, as in regard to the declaration under article 25, is that our Government should wait and gain from the experience of other countries before making the declaration under reference. In the absence of such declaration any request or petition affecting Malta would be dealt with by the European Commission of Human Rights. The Commission would either attempt to get the parties to the dispute to reach a settlement, or if it failed,

Note:- If no declaration is made by the Government under article 46, the provisions of this article of the Convention would not apply to Malta.

and unless there is the express consent of the Contracting Parties concerned to have the particular dispute referred to the European Court of Human Rights, it would refer the issue to the Committee of Ministers for a decision to be reached on a two-thirds majority vote.

The case would not be referred to the European Court of Human Rights until the Government of Malta accepted its jurisdiction under article 46 or gave its consent for the exercise of such jurisdiction in respect of that particular case. If the jurisdiction of the Court is accepted, reference of a case to it would only be made "after all domestic remedies have been exhausted according to the generally recognized rules of international law". Hence, at least in the majority of cases, a dispute being brought before the Commission of Human Rights and, thereafter, before the European Court of Human Rights, would have undergone judicial process before the Civil Court, First Hall and the Constitutional Court of Malta as well as before the Privy Council. Ministers may regard this as a cumbersome procedure and an unnecessary proliferation of appeals.