

Island of



Guernsey

Ordinance of the States

II
2006

Made.....

25th January, 2006

The European Court of Human Rights (Privileges and Immunities) (Bailiwick of Guernsey) Ordinance, 2006

**The European Court of Human Rights
(Privileges and Immunities)
(Bailiwick of Guernsey) Ordinance, 2006**

THE STATES, in pursuance of their Resolution of the 27th March, 2002^a, and in exercise of the powers conferred upon them by sections 1 and 3 of the Privileges and Immunities (Bailiwick of Guernsey) Law, 2004^b, hereby order:-

European Court of Human Rights - privileges and immunities.

1. (1) The international agreements specified in section 2 have force of law in the Bailiwick of Guernsey for the purpose of conferring the privileges and immunities to be enjoyed by or in relation to -

- (a) the European Court of Human Rights,
- (b) its judges and their families,
- (c) its registry, registrars, deputy registrars and other staff members,
- (d) persons taking part in proceedings instituted before the Court as parties, their representatives and advisers, and
- (e) witnesses and experts called upon by the Court and

^a Article III of Billet d'État No. IV of 2002.

^b Order in Council No. XII of 2005.

other persons invited by the President of the Court to take part in proceedings.

(2) The provisions of this Ordinance have effect notwithstanding any rule of law or any other enactment from time to time in force.

Agreements to have force of law in Bailiwick.

2. The international agreements referred to in section 1 are -

- (a) Article 18 of the General Agreement on Privileges and Immunities of the Council of Europe^c (reproduced at schedule 1 to this Ordinance),
- (b) the Sixth Protocol to the General Agreement on Privileges and Immunities of the Council of Europe^d (reproduced at schedule 2 to this Ordinance), and
- (c) the European Agreement relating to Persons Participating in Proceedings of the European Court of Human Rights^e (reproduced in schedule 3 to this Ordinance).

Interpretation.

3. (1) References in this Ordinance to the international agreements specified in section 2 are references thereto as from time to time amended, but only if the amendment has been ratified by, or otherwise has effect in the law of, the

^c Signed at Paris on the 2nd September, 1949.

^d Signed by the United Kingdom on the 27th October, 1999.

^e Signed by the United Kingdom on the 27th October, 1999.

United Kingdom.

(2) Expressions used in this Law have the same meanings as in the Privileges and Immunities (Bailiwick of Guernsey) Law, 2004.

(3) The Interpretation (Guernsey) Law, 1948^f applies to the interpretation of this Ordinance throughout the Bailiwick of Guernsey.

Extent.

4. This Ordinance applies throughout the Bailiwick of Guernsey.

Citation.

5. This Ordinance may be cited as the European Court of Human Rights (Privileges and Immunities) (Bailiwick of Guernsey) Ordinance, 2006.

^f Ordres en Conseil Vol. XIII, p. 355.

SCHEDULE 1

ARTICLE 18 OF THE GENERAL AGREEMENT ON PRIVILEGES AND IMMUNITIES OF THE COUNCIL OF EUROPE

"Article 18

Officials of the Council of Europe shall:

- a. be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity and within the limit of their authority;
- b. be exempt from taxation on the salaries and emoluments paid to them by the Council of Europe;
- c. be immune, together with their spouses and relatives dependent on them, from immigration restrictions and aliens' registration;
- d. be accorded the same privileges in respect of exchange facilities as are accorded to officials of comparable rank forming part of diplomatic missions to the government concerned;
- e. be given, together with their spouses and relatives dependent on them, the same repatriation facilities in time of international crisis as diplomatic envoys;
- f. have the right to import free of duty their furniture and effects at the time of first taking up their post in the country in question, and to re-export the same free of duty to their country of domicile."

SCHEDULE 2

SIXTH PROTOCOL TO THE GENERAL AGREEMENT ON PRIVILEGES AND IMMUNITIES OF THE COUNCIL OF EUROPE

"The member States of the Council of Europe, signatories hereto,

Having regard to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention");

Having regard to Protocol No. 11 to the Convention, restructuring the control machinery established thereby, signed at Strasbourg on 11 May 1994 (hereinafter referred to as "Protocol No. 11 to the Convention"), which establishes a permanent European Court of Human Rights (hereinafter referred to as "the Court") to replace the European Commission and Court of Human Rights;

Also having regard to Article 51 of the Convention which specifies that judges are entitled, during the discharge of their functions, to the privileges and immunities provided for in Article 40 of the Statute of the Council of Europe and in the agreements made thereunder;

Recalling the General Agreement on Privileges and Immunities of the Council of Europe, signed at Paris on 2 September 1949, (hereinafter referred to as "the General Agreement"), and its Second, Fourth and Fifth Protocols;

Considering that a new Protocol to the General Agreement is advisable to accord privileges and immunities to the judges of the Court,

Have agreed as follows:

Article 1

In addition to the privileges and immunities specified in Article 18 of the General Agreement, judges shall be accorded in respect of themselves, their spouses and minor children the privileges and immunities, exemptions and facilities accorded to diplomatic envoys in accordance with international law.

Article 2

For the purposes of this Protocol, the term "judges" means judges elected in accordance with Article 22 of the Convention as well as any *ad hoc* judge appointed by a State Party concerned in pursuance of Article 27, paragraph 2, of the Convention.

Article 3

In order to secure for the judges complete freedom of speech and complete independence in the discharge of their duties, the immunity from legal process in respect of words spoken or written and all acts done by them in discharging their duties shall continue to be accorded, notwithstanding that the persons concerned are no longer engaged in the discharge of such duties.

Article 4

Privileges and immunities are accorded to judges not for the personal benefit of the individuals themselves but in order to safeguard the independent exercise of their functions. The plenary Court alone shall be competent to waive the immunity of judges; it has not only the right, but is under a duty, to waive the immunity of a judge in any case where, in its opinion, the immunity would impede the course of

justice, and where it can be waived without prejudice to the purpose for which the immunity is accorded.

Article 5

1. The provisions of Articles 1, 3 and 4 of this Protocol shall apply to the Registrar of the Court and a Deputy Registrar formally notified as Acting Registrar to the States Parties to the Convention.
2. The provisions of Article 3 of this Protocol and Article 18 of the General Agreement shall apply to a Deputy Registrar of the Court.
3. The privileges and immunities referred to in paragraphs 1 and 2 of this Article are accorded to the Registrar and a Deputy Registrar not for the personal benefit of the individuals themselves but to facilitate the discharge of their duties. The plenary Court alone shall be competent to waive the immunity of its Registrar and a Deputy Registrar; it has not only the right, but is under a duty, to waive such immunity in any case where, in its opinion, the immunity would impede the course of justice, and where it can be waived without prejudice to the purpose for which the immunity is accorded.
4. The Secretary General of the Council of Europe shall be competent to waive, with the agreement of the President of the Court, the immunity of other staff members of the registry in accordance with the provisions of Article 19 of the General Agreement and having due regard to the considerations set out in paragraph 3.

Article 6

1. Documents and papers of the Court, judges and registry, in so far as they relate to the business of the Court, shall be inviolable.
2. The official correspondence and other official communications of the Court, judges and the registry may not be held up or subjected to censorship.

Article 7

1. This Protocol shall be open for signature by member States of the Council of Europe signatories to the General Agreement, which may express their consent to be bound by:
 - a. signature without reservation as to ratification, acceptance or approval; or
 - b. signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.
2. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 8

1. This Protocol shall enter into force on the first day of the month following the expiration of a period of one month after the date on which three Parties to the General Agreement have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 7 or on the date of entry into force of Protocol No. 11 to the Convention, whichever is the later.

2. As regards any State Party to the General Agreement which shall subsequently sign this Protocol without reservation in respect of ratification, acceptance or approval or which shall ratify, accept or approve it, this Protocol shall enter into force one month after the date of such signature or after the date of deposit of the instrument of ratification, acceptance or approval.

Article 9

1. Any State may, at the time of its signature without reservation in respect of ratification, of its ratification or at any time thereafter, declare, by notification addressed to the Secretary General of the Council of Europe, that the present Protocol shall extend to all or any of the territories for whose international relations it is responsible and where the Convention and its Protocols apply.
2. The Protocol shall extend to the territory or territories named in the notification as from the thirtieth day after the receipt of this notification by the Secretary General of the Council of Europe.
3. Any declaration made pursuant to paragraph 1 may, in respect of any territory specified in such declaration, be withdrawn or modified by a notification addressed to the Secretary General. The withdrawal or modification shall become effective on the first day of the month following the expiration of one month after the receipt of notification by the Secretary General.

Article 10

The Secretary General of the Council of Europe shall notify the member States of

the Council of:

- a. any signature;
- b. the deposit of any instrument of ratification, acceptance or approval;
- c. any date of entry into force of this Protocol in accordance with Articles 8 and 9;
- d. any other act, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 5th day of March 1996, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe."

SCHEDULE 3

EUROPEAN AGREEMENT RELATING TO PERSONS PARTICIPATING IN PROCEEDINGS OF THE EUROPEAN COURT OF HUMAN RIGHTS

"The member States of the Council of Europe, signatories hereto,

Having regard to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention");

Recalling the European Agreement relating to Persons Participating in Proceedings of the European Commission and Court of Human Rights, signed at London on 6 May 1969;

Having regard to Protocol No. 11 to the Convention, restructuring the control machinery established thereby, signed at Strasbourg on 11 May 1994 (hereinafter referred to as "Protocol No. 11 to the Convention"), which establishes a permanent European Court of Human Rights (hereinafter referred to as "the Court") to replace the European Commission and Court of Human Rights;

Considering, in the light of this development, that it is advisable for the better fulfilment of the purposes of the Convention that persons taking part in proceedings before the Court be accorded certain immunities and facilities by a new Agreement, the European Agreement relating to Persons Participating in Proceedings of the European Court of Human Rights (hereinafter referred to as "this Agreement"),
Have agreed as follows:

Article 1

1. The persons to whom this Agreement applies are:
 - a any persons taking part in proceedings instituted before the Court as parties, their representatives and advisers;
 - b witnesses and experts called upon by the Court and other persons invited by the President of the Court to take part in proceedings.
2. For the purposes of this Agreement, the term "Court" shall include committees, chambers, a panel of the Grand Chamber, the Grand Chamber and the judges. The term "taking part in proceedings" shall include making communications with a view to a complaint against a State Party to the Convention.
3. If in the course of the exercise by the Committee of Ministers of its functions under Article 46, paragraph 2, of the Convention, any person mentioned in paragraph 1 above is called upon to appear before, or to submit written statements to the Committee of Ministers, the provisions of this Agreement shall apply in relation to him.

Article 2

1. The persons referred to in paragraph 1 of Article 1 of this Agreement shall have immunity from legal process in respect of oral or written statements made, or documents or other evidence submitted by them before or to the Court.

2. This immunity does not apply to communication outside the Court of any such statements, documents or evidence submitted to the Court.

Article 3

1. The Contracting Parties shall respect the right of the persons referred to in paragraph 1 of Article 1 of this Agreement to correspond freely with the Court.
2. As regards persons under detention, the exercise of this right shall in particular imply that:
 - a their correspondence shall be despatched and delivered without undue delay and without alteration;
 - b such persons shall not be subject to disciplinary measures in any form on account of any communication sent through the proper channels to the Court;
 - c such persons shall have the right to correspond, and consult out of hearing of other persons, with a lawyer qualified to appear before the courts of the country where they are detained in regard to an application to the Court, or any proceedings resulting therefrom.
3. In application of the preceding paragraphs, there shall be no interference by a public authority except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, for the detection or prosecution of a criminal offence or for the protection of health.

Article 4

1. **a** The Contracting Parties undertake not to hinder the free movement and travel, for the purpose of attending and returning from proceedings before the Court, of persons referred to in paragraph 1 of Article 1 of this Agreement.
 - b** No restrictions shall be placed on their movement and travel other than such as are in accordance with the law and 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.
2. **a** Such persons shall not, in countries of transit and in the country where the proceedings take place, be prosecuted or detained or be subjected to any other restriction of their personal liberty in respect of acts or convictions prior to the commencement of the journey.
 - b** Any Contracting Party may, at the time of signature, ratification, acceptance or approval of this Agreement, declare that the provisions of this paragraph will not apply to its own nationals. Such a declaration may be withdrawn at any time by means of a notification addressed to the Secretary General of the Council of Europe.
3. The Contracting Parties undertake to re-admit on his return to their territory any such person who commenced his journey in the said territory.
4. The provisions of paragraphs 1 and 2 of this Article shall cease to apply when the person concerned has had, for a period of fifteen consecutive days from the date when his presence is no longer required by the Court, the

opportunity of returning to the country from which his journey commenced.

5. Where there is any conflict between the obligations of a Contracting Party resulting from paragraph 2 of this Article and those resulting from a Council of Europe convention or from an extradition treaty or other treaty concerning mutual assistance in criminal matters with other Contracting Parties, the provisions of paragraph 2 of this Article shall prevail.

Article 5

1. Immunities and facilities are accorded to the persons referred to in paragraph 1 of Article 1 of this Agreement solely in order to ensure for them the freedom of speech and the independence necessary for the discharge of their functions, tasks or duties, or the exercise of their rights in relation to the Court.
2.
 - a The Court shall alone be competent to waive, in whole or in part, the immunity provided for in paragraph 1 of Article 2 of this Agreement; it has not only the right but the duty to waive immunity in any case where, in its opinion, such immunity would impede the course of justice and waiver in whole or in part would not prejudice the purpose defined in paragraph 1 of this Article.
 - b The immunity may be waived by the Court, either *ex officio* or at the request of any Contracting Party or of any person concerned.
 - c Decisions waiving immunity or refusing the waiver shall be accompanied by a statement of reasons.
3. If a Contracting Party certifies that waiver of the immunity provided for in

paragraph 1 of Article 2 of this Agreement is necessary for the purpose of proceedings in respect of an offence against national security, the Court shall waive immunity to the extent specified in the certificate.

4. In the event of the discovery of a fact which might, by its nature, have a decisive influence and which at the time of the decision refusing waiver of immunity was unknown to the author of the request, the latter may make a new request to the Court.

Article 6

Nothing in this Agreement shall be construed as limiting or derogating from any of the obligations assumed by the Contracting Parties under the Convention or its protocols.

Article 7

1. This Agreement shall be open for signature by the member States of the Council of Europe, which may express their consent to be bound by:
 - a signature without reservation as to ratification, acceptance or approval; or
 - b signature, subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.
2. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 8

1. This Agreement shall enter into force on the first day of the month following the expiration of a period of one month after the date on which ten member States of the Council of Europe have expressed their consent to be bound by the Agreement in accordance with the provisions of Article 7 or on the date of entry into force of Protocol No. 11 to the Convention, whichever is the later.
2. In respect of any member State which subsequently expresses its consent to be bound by it, this Agreement shall enter into force on the first day of the month following the expiration of a period of one month after the date of such signature or of the deposit of the instrument of ratification, acceptance or approval.

Article 9

1. Any Contracting State may, when depositing its instrument of ratification, acceptance or approval or at any later date, by declaration addressed to the Secretary General of the Council of Europe, extend this Agreement to any territory or territories specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings.
2. This Agreement shall enter into force for any territory or territories specified in a declaration made pursuant to paragraph 1 on the first day of the month following the expiration of one month after the date of receipt of the declaration by the Secretary General.
3. Any declaration made pursuant to paragraph 1 may, in respect of any territory mentioned in such declaration, be withdrawn according to the

procedure laid down for denunciation in Article 10 of this Agreement.

Article 10

1. This Agreement shall remain in force indefinitely.
2. Any Contracting Party may, insofar as it is concerned, denounce this Agreement by means of a notification addressed to the Secretary General of the Council of Europe.
3. Such denunciation shall take effect six months after the date of receipt by the Secretary General of such notification. Such denunciation shall not have the effect of releasing the Contracting Parties concerned from any obligation which may have arisen under this Agreement in relation to any person referred to in paragraph 1 of Article 1.

Article 11

The Secretary General of the Council of Europe shall notify the member States of the Council of:

- a** any signature;
- b** the deposit of any instrument of ratification, acceptance or approval;
- c** any date of entry into force of this Agreement in accordance with Articles 8 and 9 thereof;
- d** any other act, notification or communication relating to this Agreement.

In witness whereof the undersigned, being duly authorised thereto, have signed this Agreement.

Done at Strasbourg, this 5th day of March 1996, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe."