9 (1952) Nr. 7

# TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

**JAARGANG 1998 Nr. 88**

A. TITEL

*Protocol bij het Verdrag tot bescherming van de rechten van de mens en de fundamentele vrijheden;*
*Parijs, 20 maart 1952*

B. TEKST

De tekst van het Protocol is geplaatst in *Trb.* 1952, 80.

Het Protocol is gewijzigd door het in rubriek J hieronder genoemde Elfde Protocol van 11 mei 1994.

Zie voor de ondertekeningen ook *Trb.* 1961, 9, *Trb.* 1970, 82 en *Trb.* 1990, 157.

Het Protocol is voorts in overeenstemming met artikel 6, eerste lid, nog ondertekend voor de volgende Staten:

| | |
|---|---|
| Hongarije | 6 november 1990 |
| de Tsjechische en Slowaakse Federatieve Republiek | 21 februari 1991 |
| Bulgarije | 7 mei 1992 |
| Polen | 14 september 1992 |
| Estland | 14 mei 1993 |
| Litouwen | 14 mei 1993 |
| Slovenië | 14 mei 1993 |
| Roemenië | 4 november 1993 |
| Rusland | 28 februari 1996 |
| Moldavië | 2 mei 1996 |
| De Voormalige Joegoslavische Republiek Macedonië | 14 juni 1996 |
| Kroatië | 6 november 1996 |
| Albanië | 2 oktober 1996 |
| Oekraïne | 19 december 1996 |
| Letland | 21 maart 1997 |

C. VERTALING

Voor de herziene vertaling zie *Trb.* 1990, 157.

D. PARLEMENT

Zie *Trb.* 1954, 152.

E. BEKRACHTIGING

Zie *Trb.* 1954, 152[1]), *Trb.* 1956, 6, *Trb.* 1961, 9[2]), *Trb.* 1970, 82 en *Trb.* 1990, 157.

Behalve de aldaar genoemde hebben nog de volgende Staten in overeenstemming met artikel 6, tweede lid, van het Protocol een akte van bekrachtiging nedergelegd bij de Secretaris-Generaal van de Raad van Europa:

| | |
|---|---|
| Spanje[3]) | 27 november 1990 |
| de Tsjechische en Slowaakse Federatieve Republiek[4]) | 18 maart 1992 |
| Bulgarije[5]) | 7 september 1992 |
| Hongarije | 5 november 1992 |
| Roemenië[6]) | 20 juni 1994 |
| Polen | 10 oktober 1994 |
| Slovenië | 28 juni 1994 |
| Liechtenstein | 14 november 1995 |
| Estland[7]) | 16 april 1996 |
| Litouwen | 24 mei 1996 |
| Albanië[8]) | 2 oktober 1996 |
| De Voormalige Joegoslavische Republiek Macedonië[9]) | 10 april 1997 |
| Letland[10]) | 27 juni 1997 |
| Oekraïne | 11 september 1997 |
| Moldavië[11]) | 12 september 1997 |
| Kroatië | 5 november 1997 |

[1]) Zweden heeft op 1 december 1994 het voorbehoud met betrekking tot artikel 2 ingetrokken, per 1 januari 1995.

[2]) De Bondsrepubliek Duitsland zond op 2 oktober 1990 een nota aan de Secretaris-Generaal van de Raad van Europa inzake de voortgezette toepassing vanaf 3 oktober 1990 van de verdragen waarbij de Bondsrepubliek Duitsland op die datum partij was. Het voor dit Protocol relevante gedeelte van de nota luidt als volgt:

"The Permanent Representation of the Federal Republic of Germany to the Council of Europe presents its compliments to the General Secretariat of the Council of Europe and has the honour to inform the Secretariat that, with regard to the continued application of treaties of the Federal Republic of Germany and

the treatment of treaties of the German Democratic Republic following its accession to the Federal Republic of Germany with effect from 3 October 1990, the Treaty of 31 August 1990 between the Federal Republic of Germany and the German Democratic Republic on the establishment of German unity (Unification Treaty) contains the following relevant provisions.

1. Article 11 Treaties of the Federal Republic of Germany

The contracting parties proceed on the understanding that international treaties and agreements to which the Federal Republic of Germany is a contracting party, including treaties establishing membership of international organizations or institutions, shall retain their validity and that the rights and obligations arising therefrom, with the exception of the treaties named in Annex I, shall also relate to the territory specified in Article 3 of this Treaty, where adjustments become necessary in individual cases, the all-German Government shall consult with the respective contracting parties.

(The treaties listed in Annex I concern matters of status and security.)

.....

The Federal Republic of Germany will proceed in accordance with these provisions.''.

[3]) Onder het volgende voorbehoud en de volgende verklaring:

«*Réserve*

L'Espagne, conformément à l'article 64 de la Convention de sauvegarde des droits de l'homme et des libertés fondamentales, dans le but d'éviter toute incertitude concernant l'application de l'article 1 du Protocole, formule une réserve, à la lumière de l'article 33 de la Constitution espagnole, qui établit ce qui suit:

‹1. Le droit à la propriété privée et à l'héritage est reconnu.

2. La fonction sociale de ces droits délimitera leur contenu, conformément aux lois.

3. Nul ne pourra être privé de ses biens et de ses droits, sauf pour une cause justifiée d'utilité publique ou d'intérêt social contre l'indemnité correspondante et conformément aux dispositions de la loi.›

*Déclaration*

L'Espagne, conformément à l'article 5 du Protocole Additionnel, réitère les déclarations formulées concernant les articles 25 et 46 de la Convention européenne des droits de l'homme, et par conséquent reconnaît la compétence de la Commission européenne des droits de l'homme et la juridiction de la Cour européenne des droits de l'homme, pour les demandes formées pour des faits postérieurs à la date de dépôt de l'instrument de ratification du Protocole Additionnel et en particulier, concernant les procédures d'expropriation entamées dans le cadre interne postérieurement à cette date.».

[4]) Op 30 juni 1993 is door het Comité van Ministers van de Raad van Europa besloten dat Tsjechië en Slowakije vanaf 1 januari 1993 als partij bij onder meer het onderhavige Protocol dienen te worden beschouwd.

[5]) Onder het volgende voorbehoud en de volgende verklaring:

«Réserve

Les dispositions de la deuxième disposition de l'article 1 du Protocole additionnel ne portent pas atteinte au champ d'application ni au contenu de l'article 22, alinéa 1, de la Constitution de la République de Bulgarie, selon lequel: ‹Les étrangers et les personnes morales étrangères ne peuvent pas acquérir le droit de propriété sur la terre, sauf dans le cas de succession conformément à la loi. Dans ce cas, ceux-ci doivent transférer leur propriété.›.

Déclaration

La deuxième disposition de l'article 2 du Protocole additionnel ne doit pas être interprétée comme imposant à l'Etat des engagements financiers supplémentaires relatifs aux établissements scolaires d'orientation philosophique ou religieuse, autres que les engagements prévus pour l'Etat bulgare par la Constitution et la législation en vigueur dans le pays.».

[6]) Onder de volgende verklaring:

«La Roumanie interprète l'article 2 du premier Protocole additionnel à la Convention comme ne pas imposant d'obligations financières supplémentaires concernant les institutions d'enseignement privé, autres que celles établies par la loi interne.».

[7]) Onder het volgende voorbehoud en de volgende verklaring:

"*Reservation*

The Estonian Rigikogu made a reservation according to which after restoring her independence, Estonia started large-scale economic and social reforms, which have encompassed the restoration or compensation to previous owners or their heirs property which was nationalised or otherwise unlawfully expropriated during the period of Soviet annexation; the restructuring of collectivised agriculture and privatisation of state owned property.

In accordance with Article 64 of the Convention, the Republic of Estonia declares that the provisions of Article 1 of the First Protocol shall not apply to the laws on property reform which regulate the restoration or compensation of property nationalised, confiscated, requisitioned, collectivised or otherwise unlawfully expropriated during the period of Soviet annexation; the restructuring of collectivised agriculture and privatisation of state owned property. The reservation concerns the Principles of the Property Reform Act (published in Riigi Teataja [State Gazette] 1991, 21, 257; RT I 1994, 38, 617; 40, 653; 51, 859; 94, 1609), the Land Reform Act (RT 1991, 34, 426; RT I 1995,, 10, 113), the Agricultural Reform Act (RT 1992, 10, 143; 36, 474; RT I 1994, 52, 880), the Privatisation Act (RT I 1993, 45, 639; 1994, 50, 846; 79, 1329; 83, 1448; 1995, 22, 327; 54, 881; 57, 979), the Dwelling Rooms Privatisation Act (RT I 1993, 23, 411; 1995, 44, 671; 57, 979; 1996, 2, 28), the Act on Evaluation and Compensation of Unlawfully Expropriated Property (RT I 1993, 30, 509; 1994, 8, 106; 51, 859; 54, 905; 1995, 29, 357), the Act on Evaluation of Collectivised Property (RT I 1993, 7, 104) and their wording being in force at the moment of the Ratification Act entered into force.

*Declaration*

In addition to the reservation to Article 1 of the First Protocol, made in accordance with Article 64 of the Convention, the Republic of Estonia hereby gives a brief summary of the laws mentioned in the reservation.

*The Principles of the Property Reform Act* provides that the objective of property reform is the restructuring of property relationships to secure proprietary integrity and free enterprise, to remedy the injustices done by violations of the right to property and to provide prerequisites for a switch to a market oriented economy. In the course of property reform, property will be compensated for or returned to the former owners or their legal heirs. Herewith other people's interests which are protected by law must not be violated nor new injustices be caused to them.

In the course of property reform, property unlawfully expropriated during the period of June 16, 1940 to June 1, 1981 by means of nationalisation, collectivi-

sation or expropriation through unlawful repression or other means violating the rights of the owner, will be returned or compensated.

In the course of property reform, the form of ownership will be changed as follows:

1. some of the state-owned property will be municipalised without charge;
2. state-owned or municipally-owned property will be privatised free of charge or for remuneration;
3. property which was transferred free of charge by the state (during the Soviet annexation) to cooperatives, state-cooperatives and communal organisations, will be returned to the Republic of Estonia.

The procedure of restoration and compensation of unlawfully expropriated property is regulated by laws and other legal acts.

*The Land Reform Act* establishes that land reform is a part of property reform and its objective is to restructure legal relationships based on state-owned land to relationships based on private land, proceeding from the continuity of the rights of the former owners and the interests of the present land-users as protected by law.

In the course of the land reform, land:

1. unlawfully expropriated will be compensated, substituted by or returned to the former owners or their legal heirs;
2. will be given with or without charge into the possession of private-law persons, public-law persons or municipal entities;
3. that is to remain in the state possession will be decided upon;
4. will be transferred for use by private or legal persons by contract or along with the building title.

Land that is not returned, nor substituted, nor left in state possession, nor given to municipal possession under the present law, will be privatised.

*The Agricultural Reform Act* provides that agricultural reform proceeds from the *Principles of the Property Reform Act.* In the course of agricultural reform, collectivised property will be returned or compensated for and the collective unit will be reorganised or liquidated. Evaluation of the collectivised property is carried out in accordance with the *Act on Evaluation of Collectivised Property.* In the course of agricultural reform the transformation of the agricultural sector is principally aimed towards farming and enterprise based on private ownership.

*The Privatisation Act* provides that the property of state-owned or municipally-owned enterprises, institutions and organisations may be privatised under the conditions and rules set out by law. The Privatisation Agency regulates privatisation of state property and fulfilment of other tasks deriving from the property reform.

*The Privatisation Act* is not applied to the privatisation of dwelling rooms in the possession of the state or municipalities, nor to non-dwelling rooms located in dwelling houses, nor to the property of cooperatives referred to in the *Agricultural Reform Act.*

*The Dwelling Rooms Privatisation Act* provides that natural persons and legal persons will be given the opportunity to acquire the dwelling rooms they are renting, uninhabited dwelling rooms, thus providing for better care and preservation of the dwelling houses.

*The Act on Evaluation and Compensation of Unlawfully Expropriated Property* defines the foundations and rules, as well as the means and scope of compensation, for determining the price of unlawfully expropriated property dealt with under the property reform.

*The Act on Evaluation of Collectivised Property* provides the procedure and grounds for determining the price of property as required for the compensation of collectivised property in accordance with Article 14 of the *Principles of Prop*

*erty Reform Act* which deals with the return and compensation of collectivised property, and Article 9 of the *Agricultural Reform Act* that deals with loans and other material obligations of the collective economic unit.''.

[8]) Onder het volgende voorbehoud met toelichting:

''Article 3 of the Protocol shall be applied in accordance with the provisions of Albanian Laws No. 8001 dated 22.09.1995 and No. 8043 dated 30.11.1995, for a period of 5 (five) years from the date of deposit of the instrument of ratification.

*Explanatory Note*

In compliance with Article 64 of this Convention, the Republic of Albania wishes to present its reservations in relation to Article 3 of the Protocol, in the sense that the content of this Article will be implemented in conformity with the provisions of Law No. 8001, dated 22.09.1995, as well as Law No. 8043, dated 30.11.1995 of the Republic of Albania, for a period of five years as of the date of deposit of the instrument of ratification.

Law No. 8001, dated 22.09.1995 'On Genocide and Crimes Against Humanity Committed in Albania during the Communist Rule for Political, Ideological and Religious Motives', and Law No. 8043, dated 30.11.1995 'On Verification of the Official Figures and Other Persons related to the Protection of the Democratic State', envisage inter alia, that, election to the central or local organs of power is prohibited, until 31 December 2001, to the authors, to those who conspired and to those who executed crimes against humanity committed in Albania during the communist rule for political, ideological or religious motives and who, up until 31 March 1991 have been: former members or alternate members of the Political Bureau, secretaries or members of the Central Committee of the Party of Labour of Albania (and Communist Party of Albania), former First Secretaries of District Party of Labour Committees and similar rank, employees in the sectors covering the state security in the Central Committee of the Party of Labour of Albania, former ministers, former members of the Presidential Council, former Chairmen of the Supreme Court, former General Prosecutors, former members of Parliament, with the exception of those cases who have acted contrary to the official line and have resigned publicly, as well as former employees of the state security service, former collaborators of the state security, and those who acted as witness for the prosecution to the detriment of the defendant in political trials, former investigators, judges in special political trials, former agents of some foreign intelligence service or their homologues.

Recently, with its Law No. 8151 dated 12.09.1996, 'On Amendments to the Law No. 7573, dated 16.06.1992 on Elections of the Organs of Local Authorities', the People's Assembly of the Republic of Albania has considerably narrowed the scope of application of Law No. 8001, dated 22.09.1995 'On Genocide and Crimes Against Humanity Committed in Albania during the Communist Rule for Political, Ideological and Religious Motives', as well as of Law No. 8043, dated 30.11.1995 'On Verification of Official Figures and Other Persons related to the Protection of the Democratic State'. As a result of this amendment, the previous laws mentioned above do not extend their scope of application to candidates for and persons elected to local councils, as well as to candidates for and persons elected as chairmen of communes. Referring to concrete figures with regard to local elections, and as a result of the recent amendments, the number of cases that should have been verified drops from about 60 (sixty) thousand for 5,764 posts to about 800 for 64 posts.

The Ministry for Foreign Affairs kindly request the Secretary General of the

Council of Europe to attach this explanatory note on the Albanian position as a formal Annex to the instrument of ratification.''.

Voorts verklaarde Albanië dat de verklaringen afgelegd met betrekking tot de artikelen 25 en 46 van het Verdrag (zie *Trb.* 1998, 87, rubriek J) mede van toepassing zijn op het onderhavige Protocol.

[9]) Onder het volgende voorbehoud:

''In accordance with Article 64 of the Convention for the protection of human rights and fundamental freedoms, the Republic of Macedonia makes the following reservation with regard to the right guaranteed by Article 2 of the Protocol to the abovementioned Convention:

Pursuant to Article 45 of the Constitution of the Republic of Macedonia, the right of parents to ensure education and teaching in conformity with their own religious and philosophical convictions cannot be realised through primary private education, in the Republic of Macedonia.

Article 45 of the Constitution reads as follows:

''Citizens have a right to establish private schools at all levels of education, with the exception of primary education, under conditions determined by law.''.

[10]) Onder het volgende voorbehoud, met bijlage:

''In accordance with Article 64 of the Convention for the protection of human rights and fundamental freedoms of 1950, the Republic of Latvia declares that the provisions of Article 1 of the First Protocol shall not apply to the laws on property reform which regulate the restoration or compensation to the former owners or their legal heirs of property nationalised, confiscated, collectivised or otherwise unlawfully expropriated during the period of Soviet annexation; and privatisation of collectivised agricultural enterprises, collective fisheries and of State and local self-government owned property.

The reservation concerns the Law On Land Reform in the Republic of Latvia Rural Regions (published in Ziņotājs [The Bulletin] 1990, No. 49; 1991, No. 41; 1992, No. 6/7; 1992, No. 11/12; 1993, No. 18/19; Latvijas Vēstnesis [The Latvian Herald] 1994, No. 137), Law On Privatisation of Agricultural Enterprises and Collective Fisheries (Ziņotājs 1991, No. 31; 1992, No. 40/41; 1993, No. 5/6; Latvijas Vēstnesis 1995, No. 90; 1996, No. 177), Law On Land Reform in the Republic of Latvia Cities (Ziņotājs 1991, No. 49/50; Latvijas Vēstnesis 1994, No. 47; 1994, No. 145; 1995, No. 169; 1997, No. 126/127), Law On Land Privatisation in Rural Regions (Ziņotājs 1992, No. 32; 1993, No. 18/19; Latvijas Vēstnesis 1993, No. 130; 1994, No. 148; 1995, No. 162; 1996, No. 111; 1996, No. 225), Law On Privatisation of Property in Agroservice Enterprises (Ziņotājs 1993, No. 14), Law On Privatisation Certificates (Latvijas Vēstnesis 1995, No. 52), Law On the Privatisation of Objects of State and Municipal Property (Latvijas Vēstnesis 1994, No. 27; 1994, No. 77; 1996, No. 192; 1997, No. 16/17/18/19/20/21), Law On Privatisation of Co-operative Apartments (Ziņotājs 1991, No. 51; Latvijas Vēstnesis 1995, No. 135), Law On the Privatisation of State and Local Self-Government Apartment Houses (Latvijas Vēstnesis 1995, No. 103; 1996, No. 149; 1996, No. 223), Law On Denationalisation of Real Estate in the Republic of Latvia (1991, No. 46; Latvijas Vēstnesis 1994, No. 42; 1994, No. 90; 1995, No. 137; 1996, No. 219/220), Law On the Return of Real Estate to the Legitimate Owners (Ziņotājs 1991, No. 46; Latvijas Vēstnesis 1994, No. 42; 1996, No. 97) and their wording being in force at the moment the Law On Ratification entered into force.

*Annex to the reservation*

In addition to the reservation to Article 1 of the First Protocol, made in accord-

ance with Article 64 of the Convention, the Republic of Latvia hereby gives a brief summary of the laws concerned.

The goal of the Law On Land Reform in the Republic of Latvia Rural Regions is to allocate the land for paying use to natural persons and legal persons and to renew to the Republic of Latvia citizens, who desire so, the land ownership rights in the procedure stipulated by law or to deliver the land into ownership without compensation or for pay.

The Law On Privatisation of Agricultural Enterprises and Collective Fisheries regulates privatisation of agricultural enterprises and collective fisheries. The objective of the Law is to decrease sequels of unlawful methods of collectivisation changing the forms of property in agricultural enterprises and collective fisheries as well as to promote the process of privatisation in agriculture and development of private entrepreneurial activity.

The aim of the Law On Land Reform in the Republic of Latvia Cities, during the gradual process of State property denationalisation, conversion, privatisation and the return of unlawfully expropriated land, is to restructure the legal, social and economic relations between city land owners and users in order to promote the respective city's construction, land protection and its rational utilisation in accordance with the interests of society.

The main objectives of the Law On Land Privatisation in Rural Regions are:

1. to create a basis and guarantees for agricultural development;
2. to renew land ownership rights to the former landowners who owned the land on July 21, 1940 or their heirs; and
3. to give the land into ownership of the Republic of Latvia citizens for compensation.

The Law On Privatisation of Property in Agroservice Enterprises regulates the change of ownership rights on property under the use and disposal of agroservice enterprises. The main objective of the Law is to promote the development of entrepreneurial activity in this branch by property privatisation, and to create conditions for organisation of the system for protection of the interests of agricultural producers on the basis of co-operation and competition.

The Law establishes the rights of the State and local self-governments, agricultural producers and employees of an enterprise, as well as of other natural persons and legal persons, and the procedure by which the ownership rights on the property under use and disposal of agroservice enterprise shall be obtained or specified.

The goal of the Law On Privatisation Certificates is to establish a legal basis for most of Latvia's residents to participate in the process of privatisation of State and local self-government owned property, using privatisation certificates as form of payment.

Certificates are issued to Latvia's residents according to the years of residence in Latvia. Additional certificates can be issued to former owners or their heirs, as compensation for illegally nationalised real estate which cannot be returned; politically repressed persons who are recognised as such, according to the Republic of Latvia Law of May 13, 1992 'On the Determination of the Status of a Politically Repressed Person', corresponding to time of imprisonment, deportation or time of settling.

The Law On the Privatisation of Objects of State and Municipal Property determines the procedure for privatisation of objects of State and local self-government property, as far as it is not regulated by other laws, as well as the establishment and operational principles of the Latvian Privatisation Agency.

The Law On Privatisation of Co-operative Apartments establishes the legal basis for the privatisation of the co-operative dwelling fund of house-building

co-operatives in the territory of the Republic of Latvia. Apartments in large dwelling houses owned by house-building co-operatives shall be considered as the object of privatisation.

The Law On the Privatisation of State and Local Self-Governments Apartment Houses establishes the procedure for privatising State and local self-government apartment houses, and the goal is to develop the real estate market and stimulate the upkeep of apartment houses, while protecting the interests of residents.

The Law On Denationalisation of Real Estate defines the real estate which can be denationalised, fixes the terms and procedure of denationalisation, the form of compensation and social guarantees of present tenants.

The Law On the Return of Real Estate to the Legitimate Owners guarantees that the real estate which has been expropriated by the State in the 1940s-1980s without compensation will be returned to the former owners or their legal heirs.''.

[11]) Onder de volgende verklaring:

«La République de Moldova interprète les dispositions comprises dans la deuxième phrase de l'article 2 du premier Protocole additionnel de manière à ne pas imposer à l'Etat des obligations financières supplémentaires visant les établissements scolaires d'orientation philosophique ou religieuses, autres que celles prévues par la législation interne.».

G. INWERKINGTREDING

Zie *Trb*. 1954, 152, *Trb*. 1956, 6, *Trb.* 1970, 82 en *Trb*. 1990, 157.

H. TOEPASSELIJKVERKLARING

Zie *Trb*. 1954, 152, *Trb*. 1956, 6, *Trb.* 1961, 9 en *Trb.* 1990, 157.

I. OPZEGGING

Zie *Trb*. 1970, 82.

J. GEGEVENS

Zie *Trb.* 1952, 80, *Trb.* 1954, 152, *Trb.* 1956, 6, *Trb*. 1961, 9, *Trb.* 1970, 82 en *Trb.* 1990, 157.

Voor het op 5 mei 1949 te Londen tot stand gekomen Statuut van de Raad van Europa zie ook, laatstelijk, *Trb*. 1996, 355.

Voor het op 4 november 1950 te Rome tot stand gekomen Verdrag tot bescherming van de rechten van de mens en de fundamentele vrijheden zie ook *Trb*. 1998, 87.

Voor het op 6 mei 1963 te Straatsburg tot stand gekomen Tweede Protocol bij hogergenoemd Verdrag zie ook *Trb*. 1998, 89.

Voor het op 16 september 1963 te Straatsburg tot stand gekomen Vierde Protocol bij hogergenoemd Verdrag zie ook *Trb*. 1998, 90.

Op 11 mei 1994 is te Straatsburg tot stand gekomen het Elfde Protocol bij hogergenoemd Verdrag, betreffende herstructurering van het bij dat Verdrag ingestelde controlemechanisme. Protocol nr. 11 zal per

1 november 1998 onder meer het onderhavige Protocol wijzigen. De tekst van Protocol nr. 11 is geplaatst in *Trb*. 1994, 141 en de vertaling is geplaatst in *Trb*. 1994, 165; zie ook *Trb*. 1998, 95.

Uitgegeven de *zeventiende* april 1998.

*De Minister van Buitenlandse Zaken,*

H. A. F. M. O. VAN MIERLO

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