



YEARBOOK  
ON  
HUMAN RIGHTS  
FOR 1954

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YEARBOOK  
ON HUMAN RIGHTS  
FOR 1954



## INTRODUCTION

This ninth volume of the *Tearbook on Human Rights* is composed of four parts, entitled:

- I. States;
- II. Trust and Non-Self-Governing Territories;
- III. International Instruments;
- IV. The United Nations and Human Rights.

On the national level, the volume surveys constitutional, legislative and judicial developments in 1954 having a bearing on human rights in seventy-eight States and in a number of Trust and Non-Self-Governing Territories under the administration of eight States. The parts dealing with international events include activities of the United Nations, the International Labour Organisation, the United Nations Educational, Scientific and Cultural Organization, the International Committee of the Red Cross, the Council of Europe and the Organization of American States.

The *Tearbook*, which is prepared in pursuance of resolutions 9 (II) and 303 H (XI) of the United Nations Economic and Social Council, is based principally upon information furnished by governments. The Council has invited governments to supply information either directly or through correspondents appointed for the purpose. About thirty-five correspondents have been so appointed. Further information is furnished by the secretariats of specialized agencies of the United Nations and other international organizations. Editorial and supplementary research work is done within the United Nations Secretariat. The *Tearbook* is thus a co-operative undertaking in which many persons and agencies in all parts of the world participate. To those who have contributed to this volume, the Secretary-General of the United Nations wishes to express his sincere appreciation.

In inviting contributions to the *Tearbook* the Secretariat draws attention to the fact that the Universal Declaration of Human Rights, adopted by the General Assembly of the United Nations on 10 December 1948 (see the text in *Tearbook on Human Rights for 1948*, pp. 446-8) is the basis of selection of material for inclusion in the *Tearbook*. The developments recorded in the *Tearbook* relate therefore to a wide range of personal, civil, political, economic, social and cultural rights. Not merely do governments, correspondents and interested international secretariats have the Universal Declaration in mind when assembling material and, like the correspondent of Austria, for instance, in the present *Tearbook*, write in terms of the categories used in the Declaration; to some extent developments are commented upon in the light of the Declaration, as by the correspondents of France, Italy and Yugoslavia and by the Governments of the German Democratic Republic and Thailand in the present volume. Under the heading, "Universal Declaration of Human Rights", the Index to the present volume refers to further instances<sup>1</sup> of the impact of the Declaration upon national and international events. The Declaration was referred to in the Political Statute of Guatemala of 10 August 1954, in the Fair Accommodation Practices Act, 1954, of Ontario, Canada, and in judicial decisions of Belgium and Italy of 1954. The Governments of the Dominican Republic and the United States of America have made reference in their contributions to this *Tearbook* to their celebration of 10 December 1954 as Human Rights Day. In the special Statute annexed to the Memorandum of Understanding between the Governments of Italy, the United Kingdom of Great Britain and Northern Ireland, the United States and Yugoslavia regarding the Free Territory of Trieste, of 5 October 1954, Italy and Yugoslavia agreed that, in the administration of their respective areas, their authorities would act in accordance with the principles of the Declaration. The index to this volume also mentions references to the Declaration in the Convention relating to the Status of Stateless Persons, 1954, and in a number of resolutions of the United Nations General Assembly and Economic and Social Council, the General Conference of UNESCO and the Tenth Inter-American Conference, all meeting during 1954.

The *Tearbook* deals mainly with constitutional and legislative developments. As far as possible, judicial decisions are also included which define the rights of individuals, sometimes declaring upon the validity of laws in the light of constitutional principles bearing on human rights.

The enforcement of laws relating to human rights depends not only on the work of the courts, however, but also and even more upon administrative policies and practices. The extent to which the

<sup>1</sup> Cf. *The Impact of the Universal Declaration of Human Rights* (United Nations publication, Sales No.: 1953.XIV.1).

*Yearbook* as the publication of an international secretariat can deal with such policies and practices is clearly limited. In this field, the line between fact and interpretation or evaluation is difficult to establish; but significant information on such policies and practices furnished by a government or correspondent is included in the *Yearbook*.

The observation has been heard that the *Yearbook*, by reproducing, without comment and in the midst of developments clearly favourable to human rights, constitutional changes, enactments, judicial decisions or administrative measures which constitute limitations upon human rights, seems to confer the blessing of the United Nations upon the latter. This is based upon a misconception of the functions of the United Nations Secretariat in preparing the *Yearbook*. The Secretariat has no mandate to pass judgement upon international and national developments from the point of view of progress in human rights. The protection of the rights of one individual has to be qualified by the observance of the same or other rights of other individuals and the protection of the interests of the community as a whole. The political and legal life of a country involves a constant process of adjustment and readjustment as between these rights and interests, and it is the purpose of the *Yearbook* to reflect such adjustments to the extent that sufficiently significant developments are known or reported to the United Nations Secretariat. The *Yearbook* does not purport to state whether progress is involved in any individual adjustment by way of constitutional or legislative change, or judicial decision, or application of administrative policy, or any international agreement envisaging such changes.

The *Yearbook* may be regarded as an international pooling of experience on human rights matters—as a sharing of experiences and techniques, principally of a legal nature, in relation to the definition of the rights and responsibilities of the individual and the control of the exercise of those rights and the fulfilment of those responsibilities. The *Yearbook* reflects solutions attempted, in different parts of the world, to the problem of reconciling the rights of the individual and those of the community, and also the sometimes conflicting demands of different rights and freedoms of the individual.

While it is impossible in a short introduction to survey the entire content of this volume, it may be observed that the year 1954 saw the adoption of the Charter for the Kingdom of the Netherlands, which established a new relationship between the Netherlands, Surinam and the Netherlands Antilles, and of new constitutions in British Honduras, Gambia, Gold Coast and Nigeria. Extracts from these instruments appear in this *Yearbook*. Also dealt with therein, usually by way of quotation, are constitutional changes in Colombia, Czechoslovakia, Guatemala, Korea, Nepal, Norway, Pakistan, Paraguay, Syria and Yugoslavia, and in the following Non-Self-Governing Territories: British Virgin Islands, Jamaica, Federation of Malaya and the (U.S.) Virgin Islands.

Of comprehensive codifications made law in 1954, reference may be made to the revised Criminal Code adopted in Canada, the new Codes of Criminal Procedure of Korea, Yugoslavia and Morocco and the Family Code of Romania.

Regular users of these *Yearbooks* will note that the index to the present volume covers its entire content and that not only rights, but limitations placed thereon to protect the various interests of the community, are indexed. The index provides the best introduction to the volume when a specific topic is under investigation, and the present introduction will not attempt to review the contents of the volume from all the points of view reflected in the index. Attention will be drawn, however, to some of the developments which are of particular interest in the light of the "pooling of experience" concept defined above.

One matter presenting great problems to the makers, interpreters and administrators of law in all countries, as well as being of profound theoretical interest, is the reconciliation of the rights of the individual and the needs of the community.

Examples of the limitation of the right to freedom of expression in the interest of, *inter alia*, public order and public morality are provided by the Press Decree, No. 24 of 1954, of Iraq, the Indecent Publications Amendment Act, 1954, of New Zealand, and the Objectionable Literature Act of 1954, of Queensland, Australia. The last-mentioned established machinery for reviewing literature with the object of preventing the distribution of objectionable literature in Queensland.

Article 83 of the Korean Constitution empowers a court to close a trial to the public when it finds that to hold a public trial would be likely to disturb public peace and order or be dangerous to public morals.

Ordinance No. 1 of 20 February 1954 of the Trust Territory of Somaliland empowered the Resident to prohibit public assemblies or himself to establish their place or date, for reasons of public order, health or morals.

A legal adjustment was affected in the Trust Territory of Tanganyika between freedom of association and the maintenance of peace, order and good government through the Societies Ordinance,

1954 of that territory. Ordinance No. 2 of 1954 of the Trust Territory of Somaliland permitted the temporary suspension of activities of institutions, associations and foundations when those activities were considered to endanger the public order and security of the territory or to be offensive to morals, religion or local customs.

The relationship between freedom of religious observance and the requirements of public order was involved in certain Italian judicial decisions reported in the present volume.

In Denmark, the right to privacy was limited by Act No. 202 of 11 June 1954, which gave police authorities a limited power to listen to telephone conversations in the interests of criminal detection.

In Burma, China and Thailand, according to reports contributed to this *Yearbook*, the right of property has been limited in the interest of the public welfare or economic advancement, through programmes of land reform. The right was limited in the interests of enforcing the principle of non-discrimination when legislation of 1954 of New Jersey, U.S.A., required action against discrimination in housing built with public funds or assistance. An instance of legislation permitting expropriation in the public interest, subject to proper compensation, is provided by legislative decree No. 4 of 30 November 1954, of Lebanon. The problem of the determination of compensation for expropriation of property was involved in a decision of the Supreme Court of Greece reported in this volume.

Access to trade and business is sometimes limited in pursuance of national economic or social policies. References to legislation of the Netherlands controlling to some degree the establishment of trades and undertakings are made under the heading "Economic affairs" in the section on that country appearing in the present *Yearbook*. In *Cooverjee B. Bharucha v. The Excise Commissioner and the Chief Commissioner, Ajmer, and others*, the Supreme Court of India on 13 January 1954 found a certain restriction of access to the retailing of intoxicating liquors to be reasonable and not unconstitutional. Procedures to ensure a fair hearing in cases involving granting of licences to engage in public transport came under review in *Midland Motorways Service, Limited v. Baird*, heard before the Supreme Court of New Zealand, 3 May-23 June 1954. References to relevant decisions of courts in the Federal Republic of Germany are to be found in the appropriate section of this *Yearbook*, under the heading "Rights to free choice of occupation".

The State also restricts in varying degrees the freedom of action of individuals by imposing civic obligations. The compulsory performance of civic social service by certain Colombian women was envisaged by Decree No. 2675 of 9 September 1954 establishing a Secretariat of Social Action and Child Welfare and a Women's Civic Social Service. The Criminal Procedure and Jurors Amendment Act, 1954 of the Union of South Africa defined the obligation to serve as a juror in criminal trials. More common types of civic obligation are the payment of taxes and the performance of military service, both of which are mentioned in, for instance, the Korean Constitution. The Finnish contribution to the present *Yearbook* includes a summary of a judicial decision involving the application of the right to earn a living in relation to the duty to pay taxes, while in New Zealand the Military Training Act, 1949 underwent amendment in 1954. The Tunisian Decree of 4 February 1954 on the co-operation of citizens in respect of public safety made it an offence to remain inactive in certain instances where action involving no risk would prevent crime.

The community sometimes deprives a person of rights as a punishment, or otherwise in pursuance of criminal policy. Most commonly this deprivation of rights takes the form of imprisonment or imposition of fines. A development of 1954 relating to capital punishment was the adoption in Israel of the Penal Law Revision (Abolition of the Death Penalty for Murder) Act, 1954. There exist also systems of probation and, as provided in the Belgian Criminal Code, conditional release. The Libyan Penal Code provides for deprivation of civil rights, as defined therein, as a penalty ancillary to the principal penalty laid down for certain offences. Legislative decree No. 39688 of 5 June 1954, amending the Penal Code of Portugal, included suspension of political rights and deprivation of the right to carry on an occupation requiring a licence or official authorization among the penalties or measures of security (defined in the decree) which were to ensure the prevention and punishment of offences. An Act of 30 December 1953 of Belgium and the Expatriation Act of 1954 of the United States of America amended legislation in accordance with which conviction for certain offences may result in loss of Belgian or United States nationality respectively. The Civil Disabilities Act, 1942, of Southern Rhodesia, permitting a person to be deprived of certain rights in the event of specified acts or omissions on his part, was repealed by the Civil Disabilities (Repeal) Act, 1953.

Imprisonment sometimes involves a limitation of a number of rights in addition to personal freedom of movement, including the freedom of communication with others and the right to personal privacy. Measures to alleviate the conditions of imprisoned criminals or internees for humanitarian reasons are included among those indexed in this *Yearbook* under "Degrading treatment, prevention of".

The conflicts which may arise between freedom of the press and the proper administration of justice are illustrated by the case of *Ex parte McRae: re Consolidated Press Ltd.* (1954), in which the Supreme Court of New South Wales, Australia, held that the publication in a newspaper of a statutory declaration purporting to have been made by an accused against whom criminal proceedings were pending, and suggesting that statements subsequently signed by him had been extorted from him and that evidence against him had been manufactured, constituted a contempt of court.

The right to participate in government, by taking part in elections, either as voter or candidate, by serving in public administration, and in other ways, is a right which the individual exercises in relation to the community, and is not only a right in itself but also a means of protecting other rights and remedying abuses. This present *Tearbook* records not only a number of relevant developments, indexed under "Electoral rights", "Government, right of participation in" and "Public service, right of access to", but also several interesting precedents on the national level of a less common type, grouped (together with developments affecting the Trusteeship System of the United Nations) under the heading of "Petition or complaint, right of". There was added to the Korean Constitution in 1954 an article 7 II having the effect, among others, of providing for the submission to a national referendum, initiated by a petition of five thousand voters qualified to vote in elections to the House of Representatives, of certain types of legislation of the National Assembly. This provision is additional to the right of petition already provided in articles 21 and 27 of the Constitution. The Act on the National Committees, of 3 March 1954, of Czechoslovakia, included provisions according to which every citizen was to have the right to address any proposal or complaint to a National Committee or its Council or any of its members. The National Committee was to receive within a set limit a report on what had been done on the matter in question and was to reply to every concrete criticism and use it to improve its work. The Revised Organic Act of the (U.S.) Virgin Islands of 1954 prohibits legislation abridging the right of the people peaceably to assemble and petition the government for the redress of grievances. Legislative decree No. 39666 of 20 March 1954 on the Status of Indigenous Persons of Portuguese Nationality in the Provinces of Portuguese Guinea, Angola and Mozambique in its article 24 accords indigenous persons the right of petition and complaint, which they may exercise at all administrative levels. More detailed provisions are made in legislation of 1954 in Bulgaria, China, Denmark and Hungary. The Petition Act of China defined, *inter alia*, the matters on which, and the persons by whom, petitions may be made. In Denmark, Act No. 203 of 11 June 1954 required the Folketing after each general election to appoint a Commissioner to supervise, on its behalf, the civil and military administration of the State. Acting on his own behalf or on the complaint of any individual, he was to decide whether Ministers, civil servants or other persons in government service had committed faults or been guilty of negligence in the execution of their tasks, and to report to the Folketing. The machinery set up by the Bulgarian legislation for the examination of complaints, petitions, statements and proposals made by citizens included time-limits within which decisions must be made upon these communications, and a prohibition against referring complaints to the person or body complained against. A State Control Commission was to supervise the enforcement of the complaints machinery. The Hungarian law in question, Act No. 1 of 1954 on the Handling of Communications received from the Population, similarly required organs of the state administration and economic organs to act upon communications from the population. No inquiry upon a communication was to be entrusted to any person or organ directly involved and the identity of the informant was to remain secret if he so desired or if the case so required. Persons calling attention to faults, irregularities or deficiencies were not to suffer any prejudice therefor.

Also of great importance from both practical and theoretical points of view is the reconciliation of the conflicting claims of specific human rights. Sometimes a conflict arises out of a claim by two persons to the same right, as when a number of people seek to exercise the right to work when unemployment prevails. In other situations two rights, each possessed by a different person, may conflict. For instance, the exercise by one person of freedom of opinion and expression often conflicts with the right of another to honour and reputation. This is true not only of private relationships, but also of the exercise on the more public level of, for example, the right of freedom of the press. Press freedom may also require limitation in the interests of the right to privacy, the right of an accused to a fair trial or the rights of children and young persons to a special social protection.

Examples of legislation aimed at protection of the right to honour and reputation are provided by the Colombian Decree No. 3000 of 13 October 1954, on the Offences of Defamation and Insult and by the Defamation Act 1954 of New Zealand. The same purpose, among others, was to be served by the Press Decree, No. 24 of 1954, of Iraq.

The protection of personal privacy, among other considerations, prompted the adoption in France of the Act of 6 December 1954, making it an offence to take photographs of or to broadcast or televise

judicial proceedings, according to the correspondent of France. In 1954, the Federal Court of Justice of the Federal Republic of Germany decided that personal papers of a confidential nature were entitled to the same kind of protection as copyright works, to be published only with the author's permission and in a manner authorized by him. The Minor Offences Act of Korea, promulgated on 1 April 1954, made it an offence to disturb the tranquillity of a neighbourhood by making unusually loud noises by means of the voice, musical instruments, radio, or otherwise. The publication of details of a person's private or family life against his will was made punishable by Act No. 6334 of 9 March 1954 of Turkey.

PART I

**STATES**

# AFGHANISTAN

## NOTE<sup>1</sup>

I. In 1954, the Convention on Genocide<sup>2</sup> and the Protocol on Slavery (cf. the Convention of 25 September 1926, to which Afghanistan had adhered)<sup>3</sup> were examined by the competent departments of the Afghan Government and subsequently ratified.

II. Also in 1954, the Registration of Acts and Regulations Section of the Prime Minister's Office registered the statutes of the following public-service institutions:

1. Bank for the Development of Agriculture and Rural Cottage Industries (Bank-e zerâ'ati wa sanâye'-e rôstâ'î), which also endeavours to raise the rural population's level of living.
2. Bank for the Development of Commerce (Pashtanê Tejârati Bank), the purpose of which is to promote trade by providing assistance mainly to the small trader.
3. Housing Development Bank (Bânk-e rahni wa taçmirâti), the main purpose of which is to assist civil servants in the intermediate grades in building houses (villas) on the outskirts of the capital.
4. Welfare Centre (mrastûn), which provides subsistence, education, training and employment for persons who are destitute or in need.
5. Afghan Red Crescent (cf. III below).

III. The work of the Afghâni Sra Myâsht (Afghan Red Crescent Society); cf. the circular of the International Committee of the Red Cross of 2 September 1954 introducing the Afghâni S'ra Myâsht as its seventy-third member.

1. Within the country:

- (a) Establishment of twelve provincial sections;
- (b) Assistance to the needy during the winter;
- (c) Aid to families settled on newly allocated land;
- (d) Assistance to flood victims.

2. Abroad:

Assistance to disaster victims, transmitted through the Red Cross and the Red Crescent Societies of India, Pakistan, Iraq, Egypt and Turkey.

<sup>1</sup> Note communicated by courtesy of the United Nations Department of the Royal Ministry of Foreign Affairs, Kabul, Afghanistan. Translation from the French original by the United Nations Secretariat.

<sup>2</sup> See *Yearbook on Human Rights for 1948*, pp. 482-486.

<sup>3</sup> See *Yearbook on Human Rights for 1953*, pp. 345-346 and 387-388.

IV. The work of Rawzantûn (Child Welfare Organization) in co-operation with UNICEF.

1. Development of the Zêzhantûn (Maternity) Centre in the capital and increase in the number of student midwives.
2. Establishment of a modern haematology and bacteriology laboratory for the training of students for work in the provinces.
3. A children's polyclinic; free distribution of medicine and dried milk. Manufacture of vaccines.
4. Establishment of social assistance centres in the various districts of the capital.
5. Establishment of a children's preventorium.
6. Wraktûn (kindergartens) in the various districts of the capital.

V. Ministry of Public Health.

1. Publications for general circulation, in addition to the scientific publications for physicians.
2. The Public Health Engineering Department, which is concerned with the provision of medical equipment and the building of hospitals.
3. The International Relations Department:
  - (a) Selection of students and physicians for WHO fellowships;
  - (b) Establishment of centres for tuberculosis control and detection (BCG vaccine);
  - (c) Co-operation with WHO and UNICEF.

VI. Ministry of Education.

1. Since the beginning of the twentieth century, there has existed side by side with traditional education, which is still protected and fostered, a system of modern education for boys and girls which is provided without cost at all levels. There are kindergartens as well as primary, secondary and technical schools and schools of higher education. Primary education is compulsory. The State gives financial assistance to Afghan students abroad or pays all their expenses.

2. In co-operation with the United Nations specialized agencies, the Ministry of Education has endeavoured to promote "fundamental education" for adults. The teacher-training schools supply the leaders for community development projects.

3. Of the 358 state-subsidized village schools, thirty-one were established in 1954.

4. Special competitive examinations at the end of the sixth and last year of primary education were instituted for pupils interested in technical training.

5. The number of girls' schools of the lower cycle of secondary education has increased considerably.

6. Particular attention has been given to vocational, and especially agricultural, training in all public schools.

7. Organization of art exhibitions.

8. An effort has been made to promote an international spirit in accordance with the principles of the United Nations.

#### VII. Foreign relations.

In order to promote foreign travel, an agreement for the abolition of visa fees was concluded with Turkey.

#### VIII. Public information.

(a) Freedom of information: frequent visits of foreign journalists to Afghanistan. Special services are provided to assist journalists who do not know the local languages.

(b) In co-operation with the United Nations, the Press Department of the Afghan Government has assisted periodicals in the publication of material concerning the Universal Declaration of Human Rights and the United Nations Charter.

The Afghan Radio has organized special programmes on human rights.



# ARGENTINA

## NOTE ON THE LEGAL STATUS OF ASSOCIATIONS OF EMPLOYERS AND WORKERS

Decree No. 23852, of 8 October 1945, on workers' associations (*Boletín Oficial de la República Argentina* No. 15309, of 13 October 1945; English and French translations in *International Labour Office Legislative Series*, 1945—Arg. 3), Act No. 14295, of 17 December 1953, on employers' associations (*Boletín Oficial* No. 17565, of 14 January 1954; English and French translations in *ILO Legislative Series*, 1953—Arg. 2) and Act No. 14348, on associations of professional workers (*Boletín Oficial* No. 17760, of 26 October 1954) created a special legal status for the associations to which, respectively, they related. Associations meeting certain requirements were recognized and accorded special rights and powers which might not be exercised by other associations. The powers of employers' and workers' associations in connexion with the conclusion of collective agreements were elaborated in Act No. 14250, of 13 October 1953, on collective labour agreements (*Boletín Oficial* No. 17507, of 20 October 1953; English and French translations in *ILO Legislative Series*, 1953—Arg. 1) and in regulations issued thereunder by decree No. 6582 of 26 April 1954 (*Boletín Oficial* No. 17637, of 29 April 1954). The approval of the Minister of Labour made a collective agreement arrived at under the provisions of the Act and the decree binding on all workers and employers

engaged in the activity concerned within the area in question, whether or not they were members of the associations which arrived at the agreement.

According to article 3 of the Act of 1953 on the legal status of employers' occupational associations, any individual or corporation had the right to be admitted to the association corresponding to his or its activity. The purpose of the associations affected by the Act was defined in article 1 as being the defence of their members' occupational interests.

According to articles 1 and 2 of the Act of 1954 on the legal status of associations of professional workers, representative associations of persons engaged in the arts, sciences, teaching or technical research, intended for the defence of the occupational and cultural interests of their members, could be freely established, provided that their objects were not contrary to morality or the laws or fundamental institutions of the nation. Article 8 granted any person engaged in a profession of one of the above-mentioned types the right to join the appropriate association. Article 24 provided that the legal recognition defined in the Act would not be granted to associations if they established or differentiated themselves, or bore a title, by reference to religion, belief, nationality, race or sex.

## NATIONALITY, CITIZENSHIP AND NATURALIZATION ACT

No. 14354, of 28 September 1954<sup>1</sup>

### TITLE I

### ARGENTINE NATIONALITY

#### Chapter I

#### ARGENTINE NATIONALS BY BIRTH

Art. 1. A person is an Argentine national by birth if he was born—

- (a) In Argentine territory;
- (b) In an Argentine warship or military aircraft;
- (c) In an international zone under the Argentine flag;
- (d) Abroad to a father or mother who is an Argentine national by birth in any of the following cases:

1. The father or mother is an officer of the Argentine foreign service.

2. The law of the place of birth does not confer nationality on the person.

3. Before attaining eighteen years of age the person establishes domicile in the Argentine Republic and remains domiciled there uninterruptedly for at least one year.

Every Argentine national by birth shall enjoy the rights conferred by the Constitution and statute on persons born in Argentine territory.

Art. 2. The first three paragraphs of the preceding article shall not apply to a child of an alien officer of the foreign service of another State who under the law of that State is a national thereof.

<sup>1</sup> *Boletín Informativo de Legislación Argentina* No. 34, Year XIV, pp. 3-6. Translation by the United Nations Secretariat.

*Chapter II*

## ARGENTINE CITIZENS BY NATURALIZATION

*Art. 3.* Aliens acquiring Argentine nationality in accordance with this law and regulations made under it shall be Argentine nationals by naturalization.

## TITLE II

## ARGENTINE CITIZENSHIP

*Chapter I*

## ENJOYMENT AND EXERCISE OF CITIZENSHIP

*Art. 4.* Argentine citizenship is an attribute of nationality and imports enjoyment of the political rights prescribed by the Constitution and statutes of the republic.

*Art. 5.* Citizenship shall be acquired by:

- (a) Argentine nationals by birth, on attaining eighteen years of age;
- (b) Argentine nationals by naturalization over the age of eighteen years, five years after their acquisition of nationality.

*Chapter II*

## LOSS OF CITIZENSHIP

*Art. 6.* An Argentine national by birth shall lose his citizenship if he:

- (a) Commits treason against the nation or any act prohibited by article 15 or 21 of the national Constitution;
- (b) Deserts from the Argentine armed forces in war;
- (c) Is naturalized in a foreign country.

*Art. 7.* An Argentine national by birth or by naturalization shall lose his citizenship if he accepts an honour or distinction granted by a foreign government and does not immediately notify the Executive Power thereof, or without leave of the Executive Power exhibits such honour or distinction or takes service with a foreign government.

## TITLE III

## NATURALIZATION

*Chapter I*

## VOLUNTARY AND AUTOMATIC NATURALIZATION

*Art. 8.* An alien who has resided continuously for two years in the territory of the republic and satisfies the other requirements of article 10 of this law may on application obtain Argentine nationality by naturalization.

*Art. 9.* An alien who has resided continuously for five years in the republic and is not affected by any of the bars enumerated in article 11 shall acquire such naturalization automatically.

*Chapter II*

## NATURALIZATION: REQUIREMENTS AND BARS

*Art. 10.* Applicants for voluntary naturalization shall be required—

- (a) To possess an elementary knowledge of the national language;
- (b) To possess an elementary knowledge of the political and social organization, history and geography of the nation;
- (c) Not to be mentally incapacitated;
- (d) To have an honest means of livelihood and a good conduct record;
- (e) Not to be nationals of a country at war with the republic;
- (f) Not to be engaged in activities contrary to articles 15 and 21 of the national Constitution;
- (g) Not to have lost Argentine nationality, except in a case to which article 20 applies.

*Art. 11.* Automatic naturalization shall be barred by:

- (a) Mental incapacity;
- (b) Lack of honest means of livelihood;
- (c) Failure to be of good conduct;
- (d) Possession of nationality of a country at war with the republic;
- (e) Activities contrary to articles 15 and 21 of the national Constitution;
- (f) Loss of Argentine nationality, except in a case to which article 20 applies.

*Chapter III*AUTHORITIES COMPETENT TO GRANT  
NATURALIZATION

*Art. 12.* The National Register of Persons shall be the authority competent to grant naturalization.

*Art. 13.* Aliens over the age of eighteen years who have resided continuously in the country for at least two years and desire to obtain Argentine nationality shall be required to apply therefor and to prove compliance with the requirements of any regulations made under this law.

*Art. 14.* Aliens over the age of eighteen and under the age of seventy years who have resided continuously in the country for more than five years shall within the time-limits established by the Executive Power present themselves in order that they may be granted Argentine nationality or state expressly that they do not wish to acquire it.

*Art. 15.* After it has been proved that the requirements of article 10 have been satisfied or that no bar under article 11 exists, and the applicant has sworn an oath of loyalty to the nation and submission to its Constitution and statutes, nationality shall be granted.

*Art. 16.* The parents or legal representative of a minor under the age of eighteen years may apply for Argentine nationality on his behalf.

*Art. 17.* An appeal against refusal by the Registry to grant naturalization shall lie to the Ministry of the Interior and Justice, whose decision shall be final.

#### *Chapter IV*

#### CITIZENSHIP ACQUIRED UNDER LAW NO. 346

*Art. 18.* Citizenship acquired under law No. 346 shall import Argentine nationality.

#### *Chapter V*

#### LOSS OF ACQUIRED NATIONALITY

*Art. 19.* A naturalized Argentine national may lose his acquired nationality on any of the following grounds:

- (a) Concealment of facts or circumstances which, if they had been known at the material time, would have barred naturalization;
- (b) Any act for which under article 6 an Argentine national by birth may lose citizenship;

(c) Direct or indirect participation in unlawful traffic in narcotic drugs, traffic in persons, or any other activity punishable under article 17 of law No. 12331;

(d) Any act done within the country or abroad in virtue of his nationality of origin.

#### TITLE IV

#### POWER TO REVOKE OR RESTORE ARGENTINE CITIZENSHIP OR ACQUIRED NATIONALITY

*Art. 20.* Citizenship or acquired nationality may be revoked by order of the Executive Power made after the person has been heard.

The Executive Power may likewise restore citizenship or acquired nationality, but not until three years have elapsed from the date of the order revoking it.

[Title V (articles 21–22) concerns penalties and Title VI (articles 23–28) contains general and transitional provisions on matters of procedure.]

### ACT No. 14400, CONCERNING PUBLIC DEMONSTRATIONS AND MEETINGS of 21 December 1954<sup>1</sup>

*Art. 1.* The dissemination of ideas, doctrines and programmes of political parties participating in elections, and of other organizations of the people, shall be absolutely free.

The competent authorities may prevent or suppress any kind of propaganda or demonstration liable to disturb the peace or public order, or contrary to the interests of the people.

*Art. 2.* Public demonstrations and meetings shall be held in enclosed places.

*Art. 3.* Demonstrations of a patriotic character or of national significance, official demonstrations, demonstrations organized by political parties in a pre-election period, and trade union, sports and artistic functions may be held in streets, squares, parks or other open places.

For the purposes of this Act, the term "pre-election period" means a period commencing sixty days before the appointed date for the election of the president or

the vice-president of the nation, or both, or forty-five days before the date appointed for any other election.

During pre-election periods, political demonstrations shall have priority in the use of open places.

*Art. 4.* Without prejudice to the foregoing provisions, the competent authority may prohibit or prevent the holding of any public meeting or demonstration if there is an imminent threat of disturbance of the peace or of public order, or if the holding of such meeting or demonstration is contrary to the interests of the people.

*Art. 5.* Any infringement of a provision of this Act shall be punishable by detention for a term of not more than sixty days, provided the acts committed do not constitute more serious breaches or criminal offences; the closing of any premises concerned may be ordered.

*Art. 6.* The police authorities, through the Federal Security Council, shall be responsible for the enforcement of this Act. Appeal may be made from decisions of the enforcement authority to the Ministry of Interior and Justice of the nation.

...

<sup>1</sup> Spanish text in *Boletín Oficial* No. 17887, of 29 April 1955. Translation by the United Nations Secretariat.

# ACT No. 14367, ON THE ABOLITION OF DISCRIMINATION AS BETWEEN CHILDREN BORN IN WEDLOCK AND CHILDREN BORN OUT OF WEDLOCK

(Enacted on 30 September 1954; promulgated on 11 October 1954)<sup>1</sup>

*Art. 1.* Public and official discrimination as between children born of parents joined together in wedlock and children born of parents not so joined, and the terms applied under the legislation in force to children born out of wedlock, are hereby abolished.

The rights and duties of parents and of children shall be governed by existing legislative provisions as amended by this Act.

Persons governed by Act No. 13252<sup>2</sup> shall continue to have the status specified in that Act.

*Art. 2.* The acknowledgement of a child shall be irrevocable; it may not be made subject to qualifications which affect its legal consequences, and shall not require acceptance on the part of the child. Acknowledgement may be made by the father or by the mother, jointly or separately:

1. By means of a declaration made to the registrar, either at the time of registering the birth of the child or at a later date;

2. By means of a document under public or private seal;

3. By a provision in a will, even if the acknowledgement of the child be made therein only incidentally.

*Art. 3.* Actions tending to establish the parentage of children born out of wedlock shall be governed by the provisions of article 325 of the Civil Code. Such action shall not, however, be receivable if a married woman is therein alleged to be the mother of the child.

*Art. 4.* The relationship status of children born out of wedlock and acknowledged by their parents may be disputed at any time by the children themselves, or by the statutory heirs of the persons making such acknowledgement within a period of ninety days from notification of the acknowledgement.

*Art. 5.* All birth certificates issued by the Registry of Births, Deaths and Marriages shall be drafted in a

way which does not indicate whether the person concerned was conceived in wedlock or not.

A copy of the registration shall be issued only at the request of the person whose birth is registered, of his parents, of his legal representatives, or following an order given by the courts upon the application by a person submitting proof of a legitimate interest.

*Art. 6.* A child who has been voluntarily acknowledged, or whose relationship has been established by a judicial decision, shall use the surname of the person acknowledging him or that of the parent named in the judicial decision, as the case may be. If both father and mother fall within this provision, the child shall use the surname of the first parent to acknowledge him or with respect to whom relationship was first judicially established; the child may, however, replace the maternal surname by the paternal one, or place the latter before the former, when paternal relationship is established subsequently to the maternal one.

*Art. 7.* The provisions of this Act shall apply to rights of inheritance in the estates of persons deceasing after its promulgation. The provisions of this Act shall, however, in no way prejudice rights accruing from acts performed prior to its promulgation.

*Art. 8.* A child born out of wedlock shall be entitled, in the estate of his parent, to one-half of what the law grants to a child born in wedlock.

*Art. 9.* In an estate in which children born in wedlock and children born out of wedlock share, the parent may not dispose by will of more than one-tenth of the net assets of the estate.

*Art. 10.* The duties inherent in parental authority shall apply to the parent of a child born out of wedlock during the minority of such child; the responsibility and sanctions specified in Act No. 13944 shall likewise apply.

*Art. 11.* The rights of a mother, in the case specified in the previous article, shall be limited to a claim for maintenance and to a right of usufruct in the child's property, provided that the mother has voluntarily acknowledged the child.

...

<sup>1</sup> Spanish text in *Boletín Oficial* No. 17765, of 3 November 1954. Translation by the United Nations Secretariat.

<sup>2</sup> Act No. 13252 concerns adoption and the legal status of adopted children.

# AUSTRALIA

## HUMAN RIGHTS IN AUSTRALIA IN 1954<sup>1</sup>

Australian legislation during 1954 of interest in connexion with human rights consists principally of the Objectionable Literature Act of Queensland—in particular the limitations placed upon the power to take action under the Act—while in the field of judicial decisions, the competing interests of freedom of discussion and the right to an unprejudiced trial were considered, and the freedom of action and belief which must be allowed to industrial workers under laws and rules relating to their trade union obligations engaged the attention of the courts in various connexions. Wage justice for skilled workers was considered by the Commonwealth Court of Conciliation and Arbitration in the “Margins Case”.

### I. LEGISLATION RELATED TO HUMAN RIGHTS

#### A. PERSONAL AND POLITICAL RIGHTS

##### *The Objectionable Literature Act of 1954 (Queensland)*

This Act provides for a Literature Board of Review to be appointed by the Governor in Council. The Board's primary function is to examine and review literature with the object of preventing the distribution in Queensland of literature which, or any part of which, is objectionable. The Board is, however, forbidden to examine or review any part of any literature consisting solely of public news, intelligence, or occurrences, or political or religious matter, or any remarks or observations therein (section 8). Literature is defined as “objectionable” which, having regard to its nature, the classes of persons and age groups amongst whom it is likely to be distributed, and its tendency to deprave or corrupt such persons, notwithstanding that persons in other classes or age groups may not be similarly affected, unduly emphasizes matters of sex, horror, crime, cruelty, or violence; or is blasphemous, indecent, obscene, or likely to be injurious to morality; or is likely to encourage depravity, public disorder, or any indictable offence; or is otherwise calculated to injure the citizens of the State (section 5). The Board may by its order prohibit the distribution in Queensland of any literature for the reason that the literature or some part thereof is, in the opinion of the Board, objectionable. A person shall not, in Queensland, distribute any literature the distri-

bution of which is prohibited by the Board (section 10). A person who feels aggrieved by an order made by the Board in respect of any literature may appeal to a court of law. The court shall determine whether or not the literature in question is objectionable under and within the meaning of the Act and, in respect of that determination, shall not be bound by the opinion of the Board.

#### B. SOCIAL SERVICES RIGHTS

##### *Social Services Act 1954 (Commonwealth)*

This Act amended the principal Act of 1947–1953 so as to provide, *inter alia*, that in ascertaining the income of a person claiming an old-age or invalid pension, in order to arrive at the appropriate rate of pension to be granted him, income derived from property, as defined, should not be included.

### II. COURT DECISIONS RELATED TO HUMAN RIGHTS

#### A. PERSONAL AND POLITICAL RIGHTS

*Ex parte McRae: re Consolidated Press Ltd. (1954)*  
Supreme Court of New South Wales<sup>2</sup>

##### *Freedom of press—Fair trial—Public interests—Contempt of court*

On 25 February 1954, S. was arrested by members of the state police force and was charged at a police station with obtaining money by false pretences with intent to defraud, with offering a bribe to a member of the police force, and other offences. On 9 March 1954 the respondents, who were publishers and acting editor of the *Daily Telegraph*, published in that newspaper a lengthy account, in the form of a statutory declaration purporting to be made by S., of the happenings subsequent to his arrest and after the charges had been preferred against him. The general effect of the matter published in the newspaper was to suggest that some statements subsequently signed by S. had been extorted from him as a result of the violence used by the police, and that the police were using force to manufacture evidence against him.

*Held:* That the publication of the statutory declaration amounted to a serious contempt of court.

<sup>1</sup> Note prepared by Mr. H. F. E. Whitlam, former Crown Solicitor, Canberra, government-appointed correspondent of the *Yearbook on Human Rights*.

<sup>2</sup> 54 *State Reports (New South Wales)* 119.

Owen, J., expressed the opinion of the court concerning the competing public interests of freedom of discussion of a matter of public importance and the unprejudiced conduct of litigation when he said:

"If S. is committed for trial, the charges will be tried by a jury, some of whom, no doubt, will have read the issue of 9th March and thus have been given, in advance of the trial, a one-sided picture of matters which must inevitably be raised and debated at that trial. The publication, where litigation is pending either in the civil or the criminal courts, of statements made by a party to that litigation, giving his version of events which are likely to be—and in the present case must be—relevant at the trial, is most improper, and unless a halt be called, trial by newspaper rather than by a tribunal lawfully constituted under the law of the land may become a feature of our society.

"It has been submitted, however, that in the present case there was lawful excuse for the publication because, it was said, the matter complained of was merely an incidental happening in the course of a long and hotly debated discussion in Parliament, in the press and amongst private citizens, on a matter of public interest, namely, the administration of the police force and the propriety or otherwise of the conduct of some of its members. There can be cases, I agree, in which two competing and conflicting public interests may come into play. On the one hand, there is the public interest which requires that suitors shall not be prejudiced by the publication of matter relevant to the issues which they are litigating. On the other hand, there is the public interest which requires that the mere pendency of litigation shall not be allowed to stifle or prevent discussion on matters of importance to the community. It is impossible to lay down a hard and fast rule to govern all such cases. Each must depend upon its own particular facts, and where such a conflict arises the court must weigh the one public interest against the other and decide on which side of the line falls the particular publication which is the subject of complaint. It is a question of degree. All that I would say is that if a newspaper is engaged in the public discussion of a topic of general importance, such as the administration of the police force, and wishes to support its arguments by reference to particular instances, it runs a grave risk of committing a contempt of court if one of the instances it selects is, to its knowledge, the subject of proceedings existing or pending in a court of law. Had the respondents here merely published the statement that, when brought before the magistrate, S. had informed him that he had been the victim of violence at the hands of the police, no complaint could have been made. A factual report of the proceedings before the magistrate could not constitute a contempt. What was in fact published was a long and circumstantial account of a person charged with the commission of a number of offences of the events which he claimed had led to his signing, under duress, a false confession of guilt, and I am of opinion that the publication of such matter constituted a serious contempt

which calls for the exercise by the court of its summary jurisdiction."

#### B. PERSONAL AND INDUSTRIAL RIGHTS

*Appeal from Refusal of Industrial Registrar to grant Certificate of Exemption from Compulsory Unionism Legislation (1954)*<sup>1</sup>

Industrial Commission of New South Wales

*Conscientious belief—Principles to be followed in ascertaining*

In this case the Industrial Commission considered the provision—section 129B—inserted in the Industrial Arbitration Act of New South Wales in 1953 requiring all employers in any industry to which an industrial award related to give absolute preference of employment to members of industrial unions, and all employees in such an industry to become financial members of an appropriate industrial union.

Sub-section (11) of the section provides, *inter alia*:

"(a) For the purposes of this sub-section "conscientious belief" includes any conscientious belief whether the grounds thereof are or are not of a religious character and whether the belief is or is not part of the doctrine of any religion.

"(b) Any person who—

(i) Objects on the grounds of conscientious belief to being a member of an industrial union of employees; and

(ii) applies in the manner prescribed to the registrar for a certificate of exemption from membership of any such union; and

(iii) satisfies the registrar that his objections on the grounds of conscientious belief are genuine shall be issued by the registrar with a certificate of exemption from membership of the industrial union..."

The Commission referred to the section as a "statutory scheme enacted by Parliament in relation to employment of unionists in industry to ensure respect for the conscientious beliefs of persons affected based on the widest concept of conscience". It said:

"We have concluded that when entertaining an application made pursuant to paragraph (b) (ii) the Registrar's function is as follows:

"(1) To decide whether the grounds of conscientious belief on which the application is based are within or in accord with sub-section (11) ... (Where) the applicant's objection is restricted to being a member of a particular industrial union ... because of a conscientious belief that that union does not properly or satisfactorily discharge its duties and obligations as an industrial Union, or the like ... this would not be a relevant belief.

<sup>1</sup> *Law Book Company's Industrial Arbitration Service*, Current Review, 310.

"(2) If a decision favourable to an applicant is reached under the preceding paragraph, then to decide whether the applicant honestly and in good faith holds the conscientious belief expressed . . . In the discharge of the function committed to him the Registrar is not concerned with and has no jurisdiction to pronounce upon the truth or falsity of the grounds of conscientious belief put forward to support the applicant . . . It is not, therefore, for the Registrar to say whether the conscientious belief is orthodox or unorthodox, logically or morally tenable or not, or capable of being supported at all. Men may conscientiously believe what they cannot prove. They may not be put to the proof of their conscientious beliefs.

"Freedom to believe must not be impaired except under the authority of positive law. No such provision, however, is contained in section 129B; indeed, as we have explained, the section upholds and preserves freedom of conscience. Where conscientious belief within the section is genuine it is absolute in relation to the subject with which the section deals. Thus the question for decision by the Registrar is and always remains: is the belief professed really held by the applicant in point of conscience—is it a genuine conscientious belief?

"(3) If a decision favourable to an applicant is reached under paragraphs (1) and (2), then the applicant is entitled as of right to have the Registrar issue a certificate of exemption in his favour. In such a case the Registrar has no discretion."

An applicant stated in an affidavit in support of his application:

"I am a member of the salaried staff of — Company, and I conscientiously believe that membership of an industrial union of employees would impose upon me new obligations and ties of loyalty to the union conflicting with my existing obligations and ties of loyalty to the company. I therefore object on grounds of conscientious belief to becoming a member of an industrial union of employees."

No other material was before the Registrar, and the applicant was not summoned by the Registrar and questioned, or afforded an opportunity to supply any further information. The Commission said that where, as here, a *prima facie* case is made out by an applicant which nevertheless does not satisfy the Registrar that a certificate of exemption should be issued, the Registrar should summon the applicant and then by examination on oath test him and endeavour to elicit such further information as the Registrar considers necessary. The Commission said:

"In view of the large number of applications for exemption made pursuant to sub-section (11) we are not unmindful of the magnitude of the task resting upon the Registrar under this ruling, but that consideration cannot be allowed to stand in the way of affording every individual applicant a reasonable and full opportunity

to make out his case. That is his right under the law and it must not be denied."

The Commission held that on the material before the Registrar it was not satisfied that the objections of the applicant on the grounds of conscientious belief were genuine and, since it could not, under the Act, hear fresh evidence, the appeal of the applicant from the Registrar's refusal of the application must be dismissed. The dismissal of the appeal should not debar the applicant from making a further application to the Registrar for exemption, if he should desire to do so.

*Gill v. Postal Workers' Union (1954)*<sup>1</sup>

Commonwealth Court of Conciliation and Arbitration

*Industrial organization—Unreasonable condition on membership*

A rule of an industrial organization provided as follows: "All affairs of the Union shall be considered and settled within the Union in accordance with the rules, and no member shall issue, or cause to be issued, any circular commenting on the affairs of the Union."

It was held that the limitation which this rule placed on the rights and liberties of members clearly constituted an unreasonable condition upon their membership, within the meaning of section 80(1)(d) of the Conciliation and Arbitration Act, and should be disallowed.

*Tripp v. Australasian Society of Engineers (1953)*<sup>2</sup>

Commonwealth Court of Conciliation and Arbitration

*Industrial organization—Tyrannical or oppressive rules*

Section 80 of the Conciliation and Arbitration Act 1904-1952 (Commonwealth) gives any member of an industrial organization the right to apply to the Commonwealth Court of Conciliation and Arbitration for the disallowance of any rule of the Organization on the ground, *inter alia*, that it is tyrannical or oppressive.

A member of an organization applied under the section to have certain rules disallowed, the principal provision of which was as follows:

"If a member or members are found guilty of issuing or causing to be issued any printed, typewritten or duplicated matter without the approval of Federal Council the candidate or candidates in whose favour the literature is issued are liable to disqualification from the ballot, and the member or members who distribute the literature are liable to expulsion under rule 48."

In disallowing the rules the court said:

"We think that a rule which may restrict the opportunity of a candidate in an election of a union in fairly placing his claims to election before his fellow

<sup>1</sup> *Law Book Company's Industrial Arbitration Service*, Current Review, 368.

<sup>2</sup> *Law Book Company's Industrial Arbitration Service*, Current Review, 300.



members, and in particular which enables the executive bodies or body in the union to determine the form of a candidate's approach to those who will be eligible to vote, is clearly tyrannical and oppressive, particularly as the power given by these clauses could enable an executive body of the Union to discriminate in the liberty to circulate printed, typewritten or duplicated matter between one candidate and another... In addition, a candidate may under these rules be disqualified on account of the circulation of such matter, without his knowledge or consent, by another person."

*Pole v. Musician's Union of Australia (1953)*<sup>1</sup>

Commonwealth Court of Conciliation and Arbitration

*Industrial organization—Tyrannical or oppressive rules*

A member of the Musicians' Union of Australia applied to the Commonwealth Court of Conciliation and Arbitration under section 80 of the Conciliation and Arbitration Act for the disallowance of the following rules on the ground that they were tyrannical and oppressive and imposed unreasonable conditions upon the membership of members of the Union:

"95. It shall be the duty of every member to—

...

(n) Refuse to give an audition as a performance or rehearsal, or part of a performance or rehearsal, without the previous consent of the District Branch or Committee.

"96. *Misconduct.* If an officer or member of the Union:

...

"(o) Has failed to attend a meeting of the Committee for any purpose whatsoever when requested so to do;

"(p) Has refused to give evidence or information of or respecting any matter being dealt with or adjudicated upon by the Committee

He shall be summoned to a meeting of the Committee... to give an explanation of his conduct and meet the charges made against him. In the event of a member failing to attend, or in the event of his duly attending but failing to give a satisfactory explanation and to thoroughly meet and refute the charge made against him, then:

"*Penalty.*" [There were set out various alternative penalties and a right of appeal, etc.]

As to rule 95 (n), the court said:

"The proper interpretation of rule 95 (n) may not be plain, but in our view the rule prohibits any performance by a member of the Union for the purpose of displaying his skill to a potential employer unless the previous consent of the district or branch committee has been obtained.

"A committee of a union should not, in our opinion, have the power to ban displays by a member or members which could lead to that member or members obtaining employment consistent with their ability. Indeed, the community, as well as members of the organization, could suffer from such restrictions. It is suggested that the appropriate committee, in administering this rule, would only be concerned with seeing that members, including those proposing to give auditions, were adequately protected, but we are concerned with the clear power given in the rule, and whether or not it is tyrannical or oppressive... We consider that the rule is on its proper construction both tyrannical and oppressive and that it does impose unreasonable conditions on members within the meaning of the section."

With regard to rule 96 (o) the court said:

"We consider that this part of the rule is so wide as to be tyrannical and oppressive and to impose unreasonable conditions within the meaning of the section in that the member, wherever he may be, is required to attend any meeting of the committee whatever its purpose, without being aware of its purpose or why he is required to attend. Further, it is at least arguable that the rule does not provide that reasonable cause of failure to attend the meeting shall prevent such failure from being misconduct."

The court disallowed the placitum. As to rule 96 (p), the court said:

"It is clear that this part of the rule is inconsistent with the common law right of a witness to refuse to give evidence or information which might incriminate him.

"It is true that in some exceptional instances this right has been expressly taken away by a statute, but in our view a rule of an organization, to which the person subject to interrogation under the rule must perforce belong if he is to earn a living at his chosen calling, cannot fail to be oppressive if it deprives him of this right."

The court disallowed placitum (p).

### C. INDUSTRIAL AND ECONOMIC RIGHTS

*The Judgement on Margins of the Commonwealth Court of Conciliation and Arbitration (1954)*<sup>2</sup>

*Marginal payments above the basic wage—Increases*

The court in this case heard claims by industrial organizations of employees in the metal trades industry for the payment of increased "margins for skill" by employers, and awarded increased rates in the more skilled occupations. The principle on which the increases were granted is not confined to the metal trades industry and the court's decision meant an

<sup>1</sup> *Law Book Company's Industrial Arbitration Service*, Current Review, 266.

<sup>2</sup> *Law Book Company's Industrial Arbitration Service*, Current Review, 401.



increase, on grounds of "wage justice", in wages of skilled workers generally.

The court defined margins as "minimum amounts awarded above the basic wage to particular classifications of employees for the features attached to their work which justify payments above the basic wage, whether those features are the skill or experience required for the performance of that work, its particularly laborious nature, or the disabilities attached to its performance". The court found that the relative position, in the way of real remuneration, of the really skilled employee in the metal trades industry had declined since the year 1937 in comparison with that of the unskilled and semi-skilled employee—partly owing to disproportionate wage increases awarded since that year without sufficient regard to differences in work values, partly to the real increase of the basic wage enjoyed by all workers regardless of skill, and partly because of the very considerable fall in the purchasing power of the marginal payments.

The court stated that it rejected the principle that marginal rates should be adjusted in accordance with variations in the purchasing power of money, and said that alterations in the general level of minimum wages must be within the capacity of the national economy. However, after investigating the wage position of the skilled worker in relation to the unskilled and semi-skilled worker throughout the years 1937–1954, and the state of the national economy as revealed by certain economic "indicators", including employment, investment, national production and productivity and overseas trade, the court said it had been led to the opinion that the adjustments in favour of the more

skilled employees' minimum rates which it proposed to make ought to be made in accordance with principles of wage justice. Having examined the material at hand, it had come to the conclusion that the economy could support what it proposed.

The adjustments proposed were that marginal rates should be increased by two and a half times what they were in the year 1937. This meant a substantial increase in the wage rates of the more highly skilled occupations and would have meant a decrease in the marginal rates of some of the less highly skilled. The court decided, however, that the national economy could support the existing rates in these categories, and did not order decreases in any existing rates.

*Federated Ironworkers' Association of Australia, New South Wales Division v. Greater Newcastle Trades Hall Council (1953)*<sup>1</sup>

Industrial Commission of New South Wales

*Trade Union—Conduct of affairs—Intervention by court*

In proceedings between rival factions in an industrial union concerning alleged irregularities in connexion with elections for office in the union, the Industrial Commission of New South Wales observed that the issue of an interim order having the effect of interrupting the conduct of affairs of a trade union in accordance with its rules is a serious act to take and the Commission will not make any such order unless it is satisfied that in the circumstances of the case it is just and necessary.

<sup>1</sup> *Arbitration Reports (N.S.W.)* 29.

# AUSTRIA

## HUMAN RIGHTS IN AUSTRIA IN 1954<sup>1</sup>

### I. LEGISLATION (ACTS AND ORDINANCES)

#### A. FUNDAMENTAL FREEDOMS

##### 1. *Equality before the Law*

The Federal Act of 16 December 1953 (*Bundesgesetzblatt* No. 14/1954) prescribes the condition that must be satisfied and the procedure that must be followed in order to obtain a declaration that, when persons who were betrothed to each other were unable to contract marriage, solely on racial or political grounds, during the period 13 March 1938 to 31 March 1945, a marriage has nevertheless come into being between them.<sup>2</sup>

An order (*BGBL* No. 52/1954) contains more particular regulations for giving effect to this Act.

##### 2. *Right to a Nationality*

Article 34 of the Convention relating to the Status of Refugees (*BGBL* No. 55/1955) provides that the Contracting States shall as far as possible facilitate the naturalization of refugees. The Federal Act of 2 June 1954 (*BGBL* No. 142/1954) was enacted to enable persons of German stock who have not yet acquired Austrian citizenship to become naturalized by means of a simple procedure. The Federal Act deliberately does not provide for collective naturalization; naturalization is to depend solely on the expressed preference of persons of German stock. Another possible solution—that of granting citizenship to persons of German stock in general while allowing them an “option of refusal”—was also rejected. This, too, might have been considered as indirect compulsion (cf. 252 of the annexes to the records of the National Council VII. GP). The Federal Act (art. 1) is applicable to all persons of German stock, and there is no requirement that the person concerned should come from the territory of the former Austro-Hungarian monarchy. Article 2 of the Federal Act lays down the conditions that must be fulfilled by persons making a declaration of citizenship. *Inter alia*, there must be an assurance that persons of German stock applying for citizenship have a positive attitude to the independent Austrian Republic and do not endanger the public peace, order and security; article 4 contains provisions concerning the effects of declarations of citizenship under the Federal

Act. The effect of these provisions may be to infringe the principle of family unity, which is elsewhere observed in the law on citizenship, but this was unavoidable in view of the family relationships of persons who had been expelled from their homes in the post-war years.

##### 3. *Freedom of Movement*

(a) Under an order (*BGBL* No. 88/1954) nationals of Ireland, Iceland and Portugal do not require an Austrian visa to cross the Austrian federal frontiers.

(b) An order (*BGBL* No. 89/1954) extends to three months the length of time for which nationals of Denmark, the Federal Republic of Germany, Ireland, Iceland, Norway, Portugal, Switzerland and Turkey in possession of a valid national passport may remain in Austria without a residence permit.

(c) The Aliens Police Act (*BGBL* No. 75/1954) regulates the legal status of aliens and the legal basis for their residence in Austria. In this connexion the expulsion order, referred to in article 3 of the Act, is of particular interest. In certain specific conditions, which are exhaustively set forth in the Act, so as to preclude arbitrary action by the State, an expulsion order may be made against an alien. The spirit of the Act, as it emerges in article 3, paragraph 2, is noteworthy. Where an alien has been convicted by a foreign court, it must be considered whether the act of which he was convicted would also be punishable under Austrian law (committee record, 238 of the annex to the records of the *National Council*, VII. G.P.). Precise limits are set to the period for which an alien may be detained prior to expulsion (*Schubhaft*) in article 5. Article 6 prescribes the time limit within which an alien against whom an expulsion order has been made must leave Austria. In the interpretation of all provisions of the Aliens Police Act, account must be taken of the Convention relating to the Status of Refugees. The Committee record refers to this in its comments on article 18 (238 of the annex to the records of the *National Council*, VII. GP).

(d) The Act to amend and supplement the Passports Act, 1954 (*BGBL* No. 61) removes certain restrictions on foreign travel.

Article 9 of the Passports Act regulates the issue of aliens' passports; such passports are issued to stateless persons and to persons of uncertain nationality who have no valid passport or travel document.

Where the conditions referred to in paragraph 7 of the Passports Act obtain, no alien's passport may be

<sup>1</sup> Survey prepared by Dr. Felix Ermacora, senior officer in the Federal Chancellery, Vienna, government-appointed correspondent of the *Yearbook on Human Rights*. English translation from the German text by the United Nations Secretariat.

<sup>2</sup> See extracts from the text, below.

issued. By its decision of 5 October 1953, G 8/53, the Constitutional Court annulled a provision of the Passports Act, 1951, infringing article 4 of the State Fundamental Act on the general rights of citizens, *Reichsgesetzblatt* No. 144/1867.<sup>1</sup> In the Act amending the Passports Act, 1954, article 7 of the Passports Act, which was partially affected by the annulment, was amended to make it consistent with the State Fundamental Act.

(e) The Registration Act (*BGBL*. No. 175/1954) contains regulations regarding the registration of Austrian citizens re-establishing residence.

#### 4. *The Right to the Inviolability of Property*

(a) A federal Act (*BGBL*. No. 133/1954) amends the Dwellings Requisitioning Act and removes certain restrictions resulting from the control of dwellings.

(b) Under the third Restitution Act (*BGBL*. No. 23/1954) the owners of certain assets are entitled to claim restitution of the property of bodies corporate dissolved during the National Socialist occupation.

(c) Under the Charitable Institutions and Foundations Reorganization Act (*BGBL*. No. 197/1954), charitable institutions and foundations are, *inter alia*, to be restored to their status as bodies corporate if they were dissolved during the period from 13 March 1938 to 27 April 1945 by order of the authorities in connexion with the National Socialist seizure of power.

(d) Under the first Nationalization Compensation Act (*BGBL*. No. 189/1954) the former joint owners of assets nationalized under the Nationalization Act (*BGBL*. No. 168/1954) are entitled to claim compensation.

#### 5. *Freedom of Association*

(a) The Act to amend and supplement the Association Act 1954 (*BGBL*. No. 141) regulates the administration of the assets of associations which had been dissolved.

(b) Under the federal Act (*BGBL*. No. 196/54) amending the Act for the Protection of Labour and Freedom of Assembly (*BGBL*. No. 113/1930) employers may no longer deduct contributions in respect of membership in associations or parties from their employees' pay.

#### B. LEGISLATION RELATING TO SOCIAL QUESTIONS

(a) Under a federal Act (*BGBL*. No. 17/1954) the Unemployment Insurance Act was amended to benefit persons who are permanently resident in an Austrian frontier district and cross the frontier to work as employees in a neighbouring State. A further Act to supplement this Act was published in *BGBL*. No. 167/1954.

(b) Provisions for the protection of the life and health of employees engaged in blasting are contained in an order (*BGBL*. No. 77/1954).

(c) A federal Act (*BGBL*. No. 66/1954) contains regulations concerning industrial homework. It includes general protective provisions and regulations concerning public and annual holidays, sickness benefits, etc. More particular regulations to give effect to the Act are contained in *BGBL*. Nos. 135 and 136/1954.

(d) The Child Welfare Act, 1954 (*BGBL*. No. 99/1954) lays down detailed principles in regard to youth welfare, maternity welfare and infant welfare. Effect is to be given to these provisions by *Land* legislation.

(e) A federal Act (*BGBL*. No. 152/1954) provides for the levying of a special tax on income to promote the construction of dwellings and to equalize family dependency burdens.

(f) The Housing Act (*BGBL*. No. 153/1954) contains provisions for the promotion of housing construction.

(g) The Act to amend and supplement the Housing Reconstruction Act, 1954 (*BGBL*. No. 154) contains provisions concerning the allocation of funds for the re-building of dwelling houses and dwellings destroyed as a result of the war.

(h) An order (*BGBL*. No. 258/1954) amends and supplements the list of categories of enterprises and occupations in which the employment of juvenile labour is prohibited.

#### C. LEGISLATION RELATING TO ECONOMIC QUESTIONS

The Price Control Act, which has been mentioned in previous reports, and the Dwellings Requisitioning Act have been renewed.<sup>2</sup>

### II. JUDICIAL DECISIONS

#### 1. *Equality before the Law*

(a) In its decision of 13 October 1954, B 93/54, the Constitutional Court held that political rights are rights affording to those concerned an influence on the formation of public policy.

(b) In its decision of 12 October 1954, B 129/1954, the Constitutional Court held that a citizen's right to equality before the law might not be abridged, even if there was shown to be an objective reason for his receiving special treatment.

#### 2. *The Right to a Hearing by the Competent Tribunal*

Where, owing to an error as to the law, an authority refuses to entertain an appeal, the complainant, as the Constitutional Court has consistently ruled, is deprived by the authority of his right to a hearing by the competent tribunal (decision of 9 October 1954, B 116/954).

#### 3. *Freedom of the Person*

In its decision of 28 June 1954, B 45/54, the Constitutional Court declared that it deliberately construed

<sup>1</sup> See *Yearbook on Human Rights for 1953*, pp. 13 and 17-18.

<sup>2</sup> See *Yearbook on Human Rights for 1953*, p. 13.

the term "arrest" in the broadest sense so as to include other immediate restrictions of freedom not formally ordered as arrest.

#### 4. *Freedom of Movement*

In its decision of 26 June 1954, B 12/54, the Constitutional Court held that the right to freedom of movement applies only to the movement from place to place of the person and of property and cannot by definition apply to immovable assets.

#### 5. *Inviolability of Property*

(a) The Constitutional Court held in its decision of 24 June 1954, B 16, 17/54, that the right to inviolability of property is enjoyed in full measure by aliens. Article 5 of the State Fundamental Act does not restrict the right to Austrian citizens; the property of aliens also is therefore inviolable, subject only to the condition that it may be expropriated in accordance with the provisions of law.

(b) In its decision of 7 December 1954, B 161/1954, the Constitutional Court held that Austrian law guarantees the freedom of the property owner in the exercise of his rights, with the sole proviso that he may not in the exercise of those rights infringe the rights of others to violate the restrictions prescribed by law for the maintenance and furtherance of the general good. Such being the content of the right to inviolability of property, article 5 of the State Fundamental Act affords constitutional protection only where the right to property is diminished by adminis-

trative measures taken without reference to any law or under a law that is unconstitutional.

### III. INTERNATIONAL AGREEMENTS

#### A. CULTURAL RIGHTS

The agreement between Austria and Italy for the promotion of cultural relations between the two countries was published in *BGBI.* No. 270/1954.

#### B. SOCIAL RIGHTS

(a) The convention of 28 June 1951 concerning minimum wage fixing machinery in agriculture was published in *BGBI.* No. 38/1954.

(b) The convention of 29 June 1951 concerning equal remuneration for men and women workers for work of equal value was published in *BGBI.* No. 39/1954.

(c) *BGBI.* No. 233/1954 contains the convention of 25 October 1921 concerning workmen's compensation in agriculture.

(d) The convention of 4 June 1952 concerning holidays with pay in agriculture was published in *BGBI.* No. 234/1954.

(e) The second convention of 11 June 1953, between Austria and the Federal Republic of Germany, concerning social insurance, was published in *BGBI.* No. 250/1954.

(f) The agreement between Austria and Switzerland facilitating the issue of certificates of fitness for marriage and regulating the exchange of personal documents was published in *BGBI.* No. 164/1954.

## FEDERAL ACT CONCERNING THE VALIDATION OF MARRIAGES OF BETROTHED PERSONS WHO SUFFERED PERSECUTION ON RACIAL OR POLITICAL GROUNDS

of 16 December 1953<sup>1</sup>

*Art. 1.* (1) If persons who were betrothed to each other were unable, solely on racial or political grounds, to contract marriage during the period 13 March 1938 to 31 March 1945, then the court shall, upon application, rule that a marriage shall be deemed nevertheless to have come into being between them. Such a ruling shall not be made unless the following conditions are fulfilled:

1. At least one of the betrothed persons must have been in possession of Austrian citizenship as from 27 April 1945 (paragraph 1 of the Citizenship (Transitional) Act, 1949).

2. In the period during which they were prevented from contracting marriage, the betrothed persons must have:

(a) Gone through a ceremony of marriage in the presence of the minister of a church or religious community recognized according to law, or otherwise declared their decision to enter into a marital union with each other according to the rules of a church or religious community recognized as aforesaid, in which event an entry relating to the ceremony or declaration must have been inserted in the marriage register of the church or community in question,

(b) Requested the registrar of births, marriages and deaths to publish the banns or applied to the competent authorities for permission to contract the marriage, in which event these proceedings must have been recorded in official documents, or

(c) Signified to third parties, in a manner admitting of no doubt, their earnest and definite intentions to become husband and wife, provided that unambiguous and wholly reliable evidence thereof can be produced; and

3. The circumstance which alone prevented the

<sup>1</sup> German text in *BGBI.* 14/1954, of 21 January 1954, received through the courtesy of Dr. Felix Ermacora, senior officer in the Federal Chancellery, Vienna. English translation from the German text by the United Nations Secretariat.

marriage from being contracted subsequently must be the death of one of the parties.

...

*Art. 2.* (1) A marriage shall be deemed to have been incapable of being contracted on racial grounds if an impediment to the marriage existed at the time under the provisions of the Act concerning the Protection of German Blood and German Honour of 15 September 1935, *Deutsches Reichsgesetzblatt* I, p. 1146, or under the provisions of the First Order to give effect to the said Act made on 14 November 1935, *Deutsches Reichsgesetzblatt* I, p. 1334, subject to the proviso, however, that in the cases contemplated by paragraphs 4 and 6 of the said order, this provision shall apply only if the registrar of births, marriages and deaths refused to perform the marriage ceremony solely on these grounds.

(2) A marriage shall be deemed to have been incapable of being contracted on political grounds if, by reason of political persecution under the National Socialist regime, one of the betrothed was forced to live under an assumed name or in hiding or was in some other manner cut off from the normal life of the community.

*Art. 4.* (1) If a marriage was declared invalid by reason of an impediment created by the legislative provisions referred to in article 2, paragraph (1), above, but the spouses nevertheless solemnly declared their intention to maintain the marital union, then the court shall, upon application, rule that a valid marriage shall be deemed to have come into being between them. This marriage shall be deemed to have been contracted on the date of the original marriage ceremony.

(2) If the parties to a marriage declared invalid in the circumstances described in paragraph (1) above again contracted marriage with each other before the entry into force of this Federal Act, then the court shall, upon application, rule that this marriage shall be deemed to have come into being on the date of the original marriage ceremony.

...

[Art. 6 provides that applications under articles 1 and 4 must be submitted before the end of the year 1954 and contains procedural provisions concerning such applications. Articles 7 and 8 provide that the Court of Appeals at Vienna has jurisdiction in these matters throughout the federal territory, and contain certain special procedural provisions.]

## BELGIUM

### HUMAN RIGHTS IN BELGIUM IN 1954<sup>1</sup>

#### I. LAWS AND REGULATIONS

##### *Criminal Law*

An Act of 11 January 1954 (*Moniteur belge* No. 15, of 15 January 1954) amends article 7 of the Act of 31 May 1888 to introduce conditional release and conditional sentence into the penal system and articles 22 and 23 of the Criminal Code concerning placing under disability.

Under articles 20 and 21 of the Belgian Penal Code, any person who has received a sentence of a certain degree of severity is placed under disability.

Where the convicted person was conditionally released, the disability would continue until his final release, obtained at the end of a period twice the length of the remaining sentence, such period in no case to be less than two years.

Inasmuch as a convicted person placed under disability was to be deprived of the right to administer and dispose of his assets and precluded from receiving any sum, allowance or portion of his income, a person conditionally released would be without means of subsistence if the law was applied strictly.

To remedy this, the Act of 11 January 1954 provides that: "The placing under disability shall be suspended ... while a convicted person is at liberty under an order of release which has not been revoked..."

Prior to the Act of 11 January 1954, a person placed under disability could not administer and dispose of his assets except by testament (Belgian Penal Code, article 22, paragraph I). To ensure that there shall be no obstacle to the marriage of a person placed under disability, the Belgian legislature has deemed it desirable to make an exception in the case of a marriage contract, as well as in the case of a testament. Article 22, first paragraph, of the Criminal Code was replaced by the following provision: "A convicted person placed under disability shall forfeit the right to administer and dispose of his assets except by testament or under a marriage contract."

##### *Right to a Nationality*

An Act of 30 December 1953 (*Moniteur belge* No. 17, of 17 January 1954) concerns the forfeiture of Belgian

nationality on the ground of conviction *in absentia* of an offence against the external security of the State committed between 26 August 1939 and 15 June 1949. The new Act repeals legislative decrees of 6 May 1944, 7 September 1946 and 27 February 1947.

The Act provides that if a person, under a judgement pronounced *in absentia* and not stayed by an application for review or enforced against the person of the offender, is convicted and sentenced in respect of an offence or attempted offence under chapter II, book II, first title, of the Criminal Code<sup>2</sup> or article 17 or 18 of the Military Criminal Code,<sup>3</sup> committed between 26 August 1939 and 15 June 1949, he shall forfeit Belgian nationality *ipso jure* on the expiry of the time-limit for filing an application for review.

A person as referred to in the first paragraph who is convicted and sentenced under a judgement published before 1 July 1946, as provided in article 9 of the legislative decree of 26 May 1944, shall, in default of an application for review declared to be admissible, be deemed to have forfeited his Belgian nationality with effect from 31 December 1946.

Article 4 of the same Act provides for the rescission *ipso jure* of the forfeiture of nationality in the case of a person who voluntarily surrenders himself to justice or is arrested to serve his sentence. In the case of a person who voluntarily surrenders himself to justice or is arrested at a later time, but not beyond twenty years after the judgement affecting him was pronounced, the forfeiture shall be rescinded *ipso jure* from the date of such surrender or arrest. The alien wife of a person who has forfeited Belgian nationality but is entitled to the benefit of this article may acquire her husband's Belgian nationality by signing a declaration to that effect, provided that she has been habitually resident in Belgium for not less than two years.

##### *Right to Freedom of Expression*

The Act of 2 March 1954 to prevent and punish any interference with the free exercise of the sovereign powers established by the Constitution (*Moniteur belge* No. 78, of 19 March 1954) prohibits any person other than a member or employee of Parliament from entering, except for a good and sufficient reason, the premises reserved for members of the legislative chambers and parliamentary employees, and from ex-

<sup>1</sup> This note is based on texts and information received through the courtesy of Mr. Edmond Lesoir, Honorary Secretary-General of the Institut international des sciences administratives, Brussels, government-appointed correspondent of the *Yearbook on Human Rights*.

<sup>2</sup> Chapter II, book II, first title, of the Criminal Code concerns serious and less serious offences (crimes et délits) against the external security of the State.

<sup>3</sup> These articles concern espionage.

pressing himself on any premises of the legislative chambers whatsoever by any action, gesture, word or other manifestation likely to disturb the work of Parliament. Any breach of the foregoing provisions is punishable by imprisonment or fine.

The same Act prohibits open-air meetings and individual demonstrations in a part of the capital bounded by specified streets in the neighbourhood of Parliament and provides penalties for any breach of these provisions.

#### *Civilian Victims of the 1940-1945 War*

The Act of 15 March 1954 concerning indemnity pensions for civilian victims of the 1940-1945 war and their beneficiaries (*Moniteur belge* No. 92, of 2 April 1954) deals with entitlement to benefit, the general conditions of indemnity, disability pensions, beneficiaries' pensions, procedure, the examination of applications, and grounds for disqualification, forfeiture and suspension.

#### *Labour Contracts and Contracts of Employment*

An Act of 4 March 1954 (*Moniteur belge* No. 71, of 12 March 1954) amends and supplements the Labour Contracts Act of 10 March 1900.

The main amendments relate to:

(1) The obligation to confirm in writing, in each individual case, trial contracts concluded for a specified period or for a specified task. Furthermore, the length of the probationary period may not be less than seven or more than fourteen days. Between the seventh and the fourteenth day such a contract may be broken by either party at any hour of the day whatsoever.

(2) The right, except in cases of *force majeure*, of any wage-earner to his normal wage if he is able to work and attends his place of work, but for reasons beyond his control is unable to work.

(3) Notice of the termination of an indeterminate contract, which notice, notwithstanding any agreement to the contrary, is henceforth compulsory.

Thus, when notice is given by the employer, the required length of notice is fourteen days, but is twice and four times as long where the wage-earner has served continuously with the same employer for not less than ten or twenty years respectively. The length of notice given by the wage-earner is seven days and may be doubled or quadrupled in the same way.

On the advice of the National Labour Council or the Joint Committee, the Crown may amend these periods of notice on behalf of special classes of workers or in connexion with notice given for certain economic and social reasons.

(4) Breach of contract without just cause, with failure to observe the prescribed periods of notice or before the expiry thereof, creates an obligation to pay the other party compensation equal to the wage payable for the period or remaining part of the period

of notice. The compensation previously payable was equal to only half of such wage.

(5) Grounds for the suspension of a contract:

(a) Sickness or accident: After a wage-earner has been incapacitated for six months, the employer may terminate the contract provided that he pays compensation calculated as described in paragraph (4). The wage-earner may likewise give notice during the period of suspension of the contract, and such notice is effective immediately. On the other hand, notice given by the employer does not take effect until after the suspension has expired.

(b) Pregnancy and confinement: The contract is suspended during the six weeks following confinement; it must also be suspended at the request of the wage-earner during the last six weeks of pregnancy.

(c) Bad weather and mechanical breakdowns: If work cannot be carried on at all, provided that the wage-earner has been warned not to attend for work.

(d) Economic grounds: As long as he gives the wage-earners at least seven days' notice, the employer may wholly suspend the contract for not more than four weeks by reason of a complete or partial absence of work, or he may introduce short-time working. In either case the wage-earner is entitled to terminate the contract without notice.

An Act of 11 March 1954 (*Moniteur belge* No. 79, of 20 March 1954) amends the Act of 7 August 1922 concerning the contract of employment, chiefly with regard to the following points:

(1) Extension of the scope of the Act through a higher ceiling for remuneration and the extension of many provisions to all contracts irrespective of the salary earned. These provisions relate, *inter alia*, to:

(a) Suspension of a contract during military service or recall to the colours, or in case of sickness, accident or confinement;

(b) Notice;

(c) The breaking of a contract after a salaried employee has been incapacitated for ninety days.

(2) Breach of contract and the length of notice required for the termination of an indeterminate contract.

There has been a striking increase in the length of periods of notice, which are determined differentially according to whether the annual salary is below or above 120,000 francs.

(a) Salary of less than 120,000 francs: An employer must give not less than three months' notice to a salaried employee who has less than five years' service. This notice must be increased by three months for each period or part of a period of five years' service with the same employer;

(b) Salary above 120,000 francs: the length of notice to be given by the employer must be determined by agreement or by a court, but may not be less than that specified in sub-paragraph (a);



(c) The length of notice required from salaried employees is reduced to half that required from employers, but may not exceed three or six months according to whether the annual salary is less than 120,000 francs or less than 180,000 francs.

It may be added that an employee dismissed by his employer according to the terms of sub-paragraph (a) may terminate the contract at thirty days' notice if he finds a new job.

The figures of 120,000 francs and 180,000 francs may be amended by the Crown on the recommendation of the National Labour Council or the National Joint Committee of Salaried Employees.

Lastly, if a contract is suspended on the grounds of sickness, accident or confinement, the employee may give notice with immediate effect; the employer may likewise give notice, but in this case the notice takes effect only when the grounds for the suspension cease to exist.

Whereas hitherto an employer could not break a contract within thirty days from the commencement of incapacity, this period has now been increased to ninety days. Furthermore, the compensation payable by him in the event of his exercising this right, which was fixed contractually at three months' salary, has been increased so as to be equal to the salary for the period of notice which would have had to be observed with regard to the employee.

(3) Suspension of contract in case of sickness or confinement. The amendments made to the Act in this respect increase the protection of salaried employees in case of sickness or accident.

Furthermore, while there was previously no distinction as between the provisions relating to maternity and to cases of sickness or accident, under the new provisions maternity cannot henceforth be treated as incapacity. Thus, contrary to the rule which applies in case of sickness—itself an innovation—under which the employee is required at his employer's request to accept a medical practitioner engaged by the latter, the employer may not send a medical practitioner or verify the existence of incapacity when an employee has produced a medical certificate in order to qualify for suspension of her contract during the last six weeks of pregnancy.

The contract is likewise suspended during the six weeks following confinement.

#### *Social Security*

A ministerial order of 23 March 1954 (*Moniteur belge* No. 133, of 13 May 1954) grants additional privileges to unemployed persons undergoing vocational re-training.

A ministerial order of 20 July 1954 (*ibid.* Nos. 203 and 204, of 22-23 July 1954) embodies various measures for the re-engagement of unemployed workers by government, provincial and municipal authorities and public establishments.

Under a royal order of 16 July 1954 (*ibid.* No. 210, of 29 July 1954), a person engaged in home crafts is entitled to compensation in respect of any period of unemployment of not less than six working days, whereas hitherto such a person was entitled to benefit only in respect of complete weeks of unemployment.

A royal order of 29 January 1954 (*ibid.* No. 36, of 5 February 1954) widens the scope of the expression "sole or main charge" in article 51, paragraph 3, of the co-ordinated Acts concerning family allowances for wage-earners.

An order of 14 December 1954 (*ibid.* No. 351, of 17 December 1954) provides for free non-contributory health assistance for invalid miners. It extends entitlement to non-contributory health assistance to old-age pensioners or invalids (not less than 150 days of sickness) who were political prisoners, prisoners of war, deportees for forced labour or members of the active or passive civil resistance and have been compulsorily or voluntarily insured without interruption since 1 January 1946. This extension also applies to the widow of a person in such a category and to voluntarily insured persons who interrupted their contributions during the war for a reason found good and sufficient by the Minister. In addition, the order provides that the period not counted for the purposes of entitlement to benefit shall be three instead of thirty days in the case of salaried employees not engaged for an indefinite period; increases the deduction for old-age pension from benefits in kind payable to persons (other than miners) insured under a labour contract; increases the proportion of remuneration taken into account in calculating the benefits in kind payable to persons insured by undertakings working a five-day week; but abolishes compensation in respect of days for which no wage is paid; and establishes a national vocational re-training service.

An order of 19 January 1954 (*ibid.* No. 28, of 28 January 1954) entitles female salaried employees to claim the old-age pension supplement *without reduction* on reaching the age of sixty years.

An order of 11 March 1954 (*ibid.* No. 78, of 19 March 1954) entitles female salaried employees to claim the increased old-age allowance *without reduction*, without means test, on reaching the age of sixty years.

By an Act of 28 June 1954 and the orders of 30 June 1954 made thereunder (*Moniteur belge* No. 181, of 30 June 1954, and No. 183, of 2 July 1954), the rate of pension has been increased as follows: in the case of a married wage-earner, to 28,000 francs; in the case of a single wage-earner, to 18,700 francs; in the case of a widow not less than sixty years of age, to 14,000 francs; in the case of a widow under sixty years of age, to 11,500 francs.

In addition, a wage-earner's widow who is under the age of fifty-five years may claim the survivor's pension supplement if she fulfils the following conditions:

(a) Is not less than forty-five years of age;



- (b) Is at least 60 per cent incapacitated for work;
- (c) Has at least one dependent child.

The royal order of 30 June 1954 to amend the order of the Regent of 10 May 1948 (*ibid.* No. 183, of 2 July 1954) raises the pension supplements for salaried employees and their widows to the same amount as those for wage-earners and their widows.

## II. RATIFICATION OF INTERNATIONAL CONVENTIONS

The International Convention (No. 101) concerning Holidays with Pay in Agriculture, adopted at Geneva on 26 June 1952 by the International Labour Conference at its thirty-fifth session, was approved by an Act of 2 February 1954 (*Moniteur belge* No. 90, of 31 March 1954).

## III. JUDICIAL DECISIONS

1. Under the legislative decree of 28 September 1939 concerning the Police Supervision of Aliens, the Minister of Justice may expel an alien whose presence is considered harmful or dangerous to the security or economy of the country. The Minister is not bound under this legislative decree to give the grounds for such action in the expulsion order. Hence, by stating that the reason for the expulsion is that the alien's presence in the kingdom is considered harmful to the security of the country, the Minister has given a sufficient explanation of the grounds for such action. It is not the function of the Council of State to judge whether the Minister is right or wrong in considering an alien's presence harmful to the security of the country, but if an appeal to set aside the order on the ground that it is *ultra vires* is lodged with the Council of State, the Council must verify that the decision to expel was not based on facts which either are non-existent or are not legally admissible as valid grounds for expulsion. Therefore the fact that an alien against whom an expulsion order has been issued participated in a May Day procession is not admissible if the Minister fails to indicate some circumstance which rendered that procession subversive. The fact that an alien participated in electoral propaganda and affixed propaganda

posters must be held to be non-existent if the Minister fails to communicate to the Council of State the information or reports on which he has relied in imputing the facts to the alien. (Decision of the Council of State (Third Chamber), 13 July 1953.)<sup>1</sup>

2. While article 14 of the Constitution does not permit the authorities to make the public expression of opinion by Belgians conditional upon prior approval of the opinions to be expressed, it does not confer on Belgians unlimited freedom to make use of the public highway for the purpose of such expression. Since the distribution of printed matter on the public highway is apt, in certain places or at certain times, to obstruct traffic, impair the cleanliness of the streets and even cause congestion, a local by-law which, for the sole purpose of obviating these consequences, makes the distribution of printed matter subject to prior authorization by the local authority is not contrary to the Constitution. (Order of the Court of Cassation (Second Chamber), 19 October 1953.)<sup>2</sup>

3. The President of the Court of First Instance of Courtrai, on 10 June 1954, issued an order in a case which involved the application of the Act of 18 June 1850 concerning the treatment of the insane. A woman had, against the wishes of her mother, been placed in a mental institution upon application by her father and under pressure from a third party. At the request of the woman and after an expert opinion had been obtained, the President of the Court ordered her immediate release. The President had requested the expert opinion having regard, *inter alia*, as stated in the first ground for his decision, to article 3 of the Universal Declaration of Human Rights, which states that "Everyone has the right to life, liberty and security of person."

This decision has not been published.

<sup>1</sup> See *Recueil annuel de jurisprudence belge* for 1954, published under the direction of Charles Van Reepinghen, Brussels 1955, p. 242.

The legislative decree of 28 September 1939 concerning the Police Supervision of Aliens is no longer in force, having been extended only until 31 March 1952 (Act of 14 July 1951). The expulsion of aliens is now governed by the Act of 28 March 1952 on the Police Supervision of Aliens (articles 4 and 5).

<sup>2</sup> *Ibid.*, p. 215.

# BOLIVIA

## NOTE<sup>1</sup>

1. The National Retirement, Pensions and Provident Fund for employees and workmen of the printing industry was set up by Supreme Decree of 25 March 1954. The Fund is placed under the supervision of an Advisory Council, composed of a representative of the Government as chairman, a representative of the employees and workmen of the Bolivian printing industry, appointed by the Printers' Trade Union, a representative of printing industry employers and a salaried manager, and an Executive Committee composed of the salaried manager, the general secretary and the treasurer of the Printers' Trade Union, and two other members appointed by the Union.

2. Under article 39 of supreme decree No. 3691, of 3 April 1954 (*Anales de Legislación Boliviana* No. 21, of April, May and June 1954), the general scheme of family allowances and infants' benefits laid down in supreme decree No. 3359, of 9 April 1953, is extended to the following categories of workers:

- (a) Workmen and employees of railway companies and allied undertakings;
- (b) Workmen and employees of commercial firms;
- (c) Workers employed by banks and similar establishments;
- (d) Workers employed by the Bolivian Development Corporation;
- (e) Journalists and workers employed by publishing and printing enterprises;

3. In accordance with supreme decree No. 3691, of 3 April 1954 (*Anales* No. 21, of April, May and June 1954) railway workers and workers in allied undertakings who attained the age of fifty-five years on or before 30 June 1954 were, as an exceptional measure, made eligible for a retirement pension, provided they had at least fifteen years' service in respect of which the contributions required by law had been duly paid; the amount of the pension is based on the number of years of service, in accordance with the regulations for invalidity benefits laid down by supreme decree No. 1439, of 30 December 1948.

4. Under articles 54 to 63 of supreme decree No. 3691, of 3 April 1954 (*Anales* No. 21, of April, May and June 1954), public employees are eligible for the benefits in cash and in kind under the Sickness and Maternity Insurance scheme set up by supreme decree No. 2787, of 11 October 1951.

5. Article 31 of supreme decree No. 3691, of 3 April 1954, makes provision for the fixing of minimum wages for agricultural labourers in the *altiplano* and valley areas, the tropical areas, sub-tropical areas and vine-growing areas.

6. Under article 32 of supreme decree No. 3691, of 3 April 1954 (*Anales* No. 21, of April, May and June 1954), the minimum monthly wage of male and female domestic workers has been fixed at 3,000 bolivianos. In addition, employers are required to provide domestic workers with the same food as the rest of the household. In the case of minors, the minimum monthly wage is 1,500 bolivianos plus food.

7. In accordance with supreme decree No. 3732, of 19 May 1954 (*Anales* No. 21, of April, May and June 1954), lands belonging to Indian communities which have been converted into private rural property at any time since 1 January 1900 may, if proof of this circumstance is established, be restored to the community concerned, without compensation, in accordance with the procedure, and subject to the conditions laid down by the supreme decree. Community lands which lie within the urban radius of the capitals of departments, provinces and cantons, if their area is greater than that specified for small holdings and if they are deemed to be a rural estate, are subject to this provision as regards that part of the total unbuilt area which exceeds the specified maximum for a small holding.

8. Supreme decree No. 3774, of 24 June 1954 (*Anales* No. 21, of April, May and June 1954), increases, with retroactive effect to 1 January 1954, the maximum compensation payable to mine workers in respect of occupational risks, to 900 bolivianos a day and 324,000 bolivianos a year. The decree also specifies that the minimum daily wage shall be 300 bolivianos. If any apprentice or workman earns less than this amount, compensation will be payable on the basis of the minimum wage for compensation purposes, thus amending the decree of 3 May 1951.

9. Under supreme decree No. 3784, of 1 July 1954 (*Anales* No. 22, of July, August and September 1954), the Government ratified the following International Labour Conventions: No. 5 of 1919, fixing the Minimum Age for Admission of Children to Industrial Employment; No. 14 of 1921, concerning the Application of the Weekly Rest in Industrial Undertakings; No. 19 of 1925, concerning Equality of Treatment for National and Foreign Workers as regards Workmen's Compensation for Accidents; No. 26 of 1928, concern-

<sup>1</sup> Note kindly furnished by the Permanent Mission of Bolivia to the United Nations. Translation by the United Nations Secretariat.

ing the Creation of Minimum Wage-fixing Machinery; No. 42 of 1934, concerning Workmen's Compensation for Occupational Diseases; No. 96 of 1949, concerning Fee-charging Employment Agencies.

10. It was decided, by order No. 63788, of 31 August 1954, that workmen's representatives on the Board of Administration of the National Social Security Fund shall work full-time and with regular hours in the performance of their representative duties.

11. Under supreme decree No. 3722, of 6 May 1954 (*Anales* No. 21, of April, May and June 1954), women were made eligible for all judicial posts without exception.

12. Title IX of supreme decree No. 3691, of 3 April 1954 (*Anales* No. 21, of April, May and June 1954), which extends to state employees the benefits in cash and in kind under the Sickness and Maternity Insurance scheme established by supreme decree No. 2787, of 11 October 1951, specifies that for this purpose the term "public employees" means persons appointed to public employment and receiving their remuneration from the national budget, with the exception of members of the Army and the *Cuerpo de Carabineros*, which have their own health services.

13. Under supreme decree No. 3824, of 2 September 1954 (*Anales* No. 22, of July, August and September 1954), the monthly pensions of retired schoolteachers were readjusted with retrospective effect to 1 July 1954, and brought into line with the level of salaries at present being paid to schoolteachers under the current budget for education. The adjusted pensions are payable by the Independent Pension and Retirement Fund of the Education Department, the adjustment being in accordance with the scale laid down in article 1 of the Act of January 1945.

14. Under title V of supreme decree No. 3691, of 3 April 1954 (*Anales* No. 21, of April, May and June 1954), family allowances were raised to 1,000 bolivi-  
anos a month as from 1 April 1954.

15. In accordance with title VI of supreme decree No. 3691, of 3 April 1954 (*Anales* No. 21, of April, May and June 1954), the provisions concerning the construction of low-cost dwellings for workers were made applicable to all labourers, workmen and employees of the undertakings named in the various sub-paragraphs of paragraph 2 of this note, with effect from 1 April 1954.

## BRAZIL

### ACT No. 2171, OF 18 JANUARY 1954, CONCERNING ENTRY INTO THE DIPLOMATIC SERVICE<sup>1</sup>

*Art. 1.* Entry into the diplomatic service, entry grade, shall be open to persons of Brazilian birth, without distinction as to sex, subject to the provisions of, and to the conditions set out in, legislative decree No. 9032, of 6 March 1946.

*Sole paragraph.* If a candidate is married, his spouse must also be of Brazilian birth.

<sup>1</sup> Portuguese text on p. 18 of *Coleção das Leis de 1954*, Vol. 1, *Atos do Poder Legislativo*, received through the courtesy of Dr. Carlos Medeiros Silva, Legal Adviser to the Brazilian Government, government-appointed correspondent of the *Yearbook on Human Rights*. Translation by the United Nations Secretariat.

*Art. 2.* This Act shall enter into force on the date of its publication and shall supersede all conflicting provisions, specifically the provisions of article 2, item "a" of legislative decree No. 9032, of 6 March 1946, and article 1, sole paragraph, of legislative decree No. 9202, of 26 April 1946.

# BULGARIA

## NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS<sup>1</sup>

### I

In 1954, Bulgarian legislation relating to human rights was enriched by a number of additional statutory instruments, amendments and improvements, which must be viewed within the whole framework established in recent years. In order to obtain a fuller picture of the position now prevailing as a result of the legislative programme carried through in 1954 and in the years immediately preceding it, we must review the main fields of legislative action where human rights problems are wont to arise.

#### 1. Right of Suffrage

In the field of political rights, the period under review witnessed the enactment of some important statutory measures relating to the right of suffrage.

The Penal Code (*Journal of the Presidium of the National Assembly* No. 13, of 12 February 1952) prescribes a penalty of deprivation of liberty for a period not exceeding three years and a fine not exceeding 100,000 leva for any person who by force, deceit, threats, corrupt practice or any other unlawful means restrains the freedom of another person to exercise his right of suffrage or to seek election (art. 100). A penalty is also prescribed for any holder of a public office or any member of an electoral commission who, by any means whatsoever, falsifies the result of an election (art. 102).

The Act concerning elections to people's councils of workers' representatives (*Journal* No. 94, of 23 November 1951) and the Act concerning elections to the National Assembly of the People's Republic of Bulgaria (*Journal* No. 14, of 10 February 1953) set forth the provisions governing elections to the principal representative bodies in the State; the people's councils of workers' representatives are the highest local authorities, while the National Assembly is the supreme representative organ for the country as a whole. One striking innovation, in comparison with the former system established by the Act concerning the election of people's representatives (*Official Gazette* No. 175, of 1 August 1949; mentioned in *Yearbook on Human Rights for 1949*, p. 28), is the abolition of electoral lists and the introduction of the procedure whereby each electoral district votes for individual candidates. This enables

the electors and the persons elected to become more intimately and directly acquainted. In order to be elected, a candidate must poll more than half of all the votes.

#### 2. Right of Request, Complaint and Petition

The right of every citizen to make requests, complaints and petitions, established by article 89 of the Constitution,<sup>2</sup> has been developed by the legislation now in force in Bulgaria into an institution which plays a part in every sector of state activity. This institution is of great significance in safeguarding legitimate interests. It serves to protect the rights of citizens against every form of arbitrary action or abuse, and, at the same time, gives Bulgarian citizens an excellent opportunity to communicate their views and suggestions, and thus to play a more active political part in the work and activities of state organs.

The principal statutory instruments governing this institution are the decree concerning the receipt and examination of workers' complaints and action thereon (*Journal* No. 67, of 21 August 1951), and resolution No. 875 of the Council of Ministers. The latter approved the Regulation concerning the receipt, examination and adjudication of citizens' complaints by administrative and other authorities (*Journal* No. 69, of 28 August 1951). Complaints, petitions, written statements and proposals received from citizens, including matter which refers solely to the author's personal business, are regarded as documents affecting the public interest (decree, art. 1). The text establishes a strict procedure which must be observed in receiving and examining complaints and fixes time-limits within which decisions must be taken. A complaint may not be referred to the person or body whose action is being impugned. In the event of the rescission or variation of any decision regarding a complaint, every measure taken against the complainant which is inconsistent with the ruling of the superior authority is deemed to be revoked without any further application on his part.

The resolution of the Council of Ministers of 3 August 1954 (*Journal* No. 65, of 13 August 1954) added certain refinements to the regulation concerning complaints. There are now additional provisions requiring ministries and other departments, as well as local people's councils and their executive committees, to conduct, at regular intervals, a periodic inspection of the activities of organs competent to receive com-

<sup>1</sup> Note prepared by Professor Anguel Angueloff, Legal Adviser to the Ministry of Foreign Affairs, Sofia, government-appointed correspondent of the *Yearbook on Human Rights*. Translation by the United Nations Secretariat.

<sup>2</sup> See *Yearbook on Human Rights for 1947*, p. 63.

plaints and to take action thereon. The strict enforcement of the decree and the regulation concerning complaints is now the responsibility of a State Control Commission, which acts as the central supervisory organ for the whole country.

### 3. *Defence of the Rights of Citizens through the Institution of Courts and Procedures conceived along Progressive Lines*

In this connexion, special mention must be made of two new codes of procedure—the Code of Criminal Procedure (*Journal* No. 11, of 5 February 1952) and the Code of Civil Procedure (*Journal* No. 12, of 8 February 1952).

Judges and judicial assessors are elected. The judges are independent, subject only to the law, and required to render their decisions solely according to the dictates of their judicial conscience. The codes confirm the principles that the trial must be public and that each side is entitled to state its arguments. Every party to proceedings is safeguarded by a number of procedural guarantees.

Special stress is laid on the right of every person charged with a criminal offence to submit his defence (Code of Criminal Procedure, art. 8).

A principle applicable in both penal and civil proceedings is that allegations must be substantiated by evidence. Pursuant to article 3 of the Code of Civil Procedure, the parties to a suit and their representatives are liable for any damage attributable to their failure to show good faith and respect for the precepts governing a socialist society when availing themselves of their rights under procedural law. Every allegation made before the court must be true. The court must actively assist the parties with general explanations regarding their true rights and the relationship between them. It must also instruct the parties in the matter of due compliance with procedural formalities, so that they do not suffer prejudice through their ignorance, scant education or other like circumstance (Code of Civil Procedure, art. 4). If a person connected with a case is not acquainted with the Bulgarian language, the court appoints an interpreter to assist that person in completing the necessary procedural formalities and to explain the various actions of the court (Code of Civil Procedure, art. 5).

### 4. *Equality before the Law*

The legislation of the People's Republic of Bulgaria recognizes no discrimination or privilege based on nationality, origin, religion or material situation.

The Penal Code makes it a criminal offence (punishable by deprivation of liberty for a period not exceeding three years) for any person to preach or instigate racial or national enmity or hatred, or to resort to violence against the person or property of another on the grounds of the latter's nationality, race, religion, or political convictions. Penalties are also prescribed for persons who form a mob to attack specific groups of

the population, nationalities or religious communities, or any specific person or property.

### 5. *Right of Property*

The Property Act (*Journal* No. 92, of 16 November 1951) contains the basic provisions governing both socialist property (which belongs to the State or to co-operative or other communal organizations) and private property (which is owned by an individual or by several individuals). Property acquired through work or thrift enjoys special protection.

The Act adopts the principle that no person may be deprived of his property except when there are reasons, within the meaning of the Act, which necessitate its transfer to the State or to a co-operative or other communal organization (only in the case of immovable property); it is expressly provided that all the procedural conditions must be observed (Property Act, arts. 102–107). Expropriation can only take place pursuant to a resolution of the Council of Ministers. The owner of expropriated property is compensated by a cash payment of a specified amount or by the assignment of suitable equivalent property. Any owner dissatisfied with the valuation of the expropriated property or with the property substituted therefor may appeal to the court. Possession of the expropriated property may be taken only after compensation has been paid or after the equivalent property has been duly delivered.

### 6. *Right to Work and the Exercise thereof*

The fundamental rules governing workers' rights are set forth in the Labour Code, published in the *Journal of the Presidium of the National Assembly* No. 91, of 13 November 1951 (see the note concerning the contents of the Labour Code in the *Yearbook on Human Rights for 1952*, pp. 15–16).

Numerous statutory rules and orders elaborating the principles of the Labour Code have been promulgated since the Code's enactment. In this context, it is impossible to set them forth *in extenso*, or even to mention all the instruments forming the volume of provisions relating to labour. Many of these rules and orders are designed to ensure proper working conditions for every worker and employee by eliminating risks to life and health (see, for example, the order concerning pre-placement and periodic medical examinations for workers and employees and the placement of invalids (*Journal* No. 16, of 24 February 1953), which prescribes a pre-placement medical examination for all and a compulsory periodic examination for workers and employees in hazardous occupations; the resolution of the Council of Ministers (*Journal* No. 39, of 15 May 1953) concerning the planning of labour protection measures and works clinics for workers employed in industry, construction and transport, which also contains a list of the undertakings to which the resolution applies; the order concerning the organization, equipment and operation of health services in under-

takings and enterprises (*Journal* No. 86, of 17 October 1952), which deals with the entire system of remedial and preventive establishments, including children's crèches and playgrounds, feeding centres, and so forth). Some of the statutory instruments deal specifically with the protection of female labour. For example, the Women's Employment Order (*Journal* No. 2, of 6 January 1953) establishes a set of rules restricting the employment of women and lists the types of work regarded as particularly harmful to health for which women are generally not accepted.

Besides numerous *substantive* provisions dealing with the right to work and the exercise thereof, the legislation enacted pursuant to the Labour Code also includes *procedural* provisions designed to develop and strengthen the jurisdictional machinery through which the worker may safeguard the rights vested in him by law. In this connexion, mention should be made of the regulation concerning conciliation commissions (*Journal* No. 38, of 9 May 1952), which contains detailed provisions regarding the organization and procedure of conciliation commissions attached to undertakings and enterprises, the action which these commissions may take, and appeals from their rulings; these commissions, together with the courts, guarantee the fullest protection to the worker. The membership of a conciliation commission is composed of an equal number of representatives designated by the administration and by the trade union committee of the establishment or undertaking.

During 1954, the process of developing the Labour Code and all the amplifying and more detailed regulations governing labour relations, in conformity with the principle of universal defence and protection of labour, was duly continued through the promulgation of the instruments listed hereunder:

(a) The Regulation concerning the application of the decree concerning rewards for inventions, technical developments and suggestions which increase efficiency (*Journal* No. 97, of 3 December 1954); this enactment deals with the question of patent rights and copyright arising out of such inventions and suggestions, the encouragement of such inventions and suggestions, rewards, and the rights and benefits for which inventors and persons who contribute to efficiency are eligible.

(b) Resolution No. 85 of the Council of Ministers of 22 February 1954 (*Journal* No. 20, of 9 March 1954), which shortens from seven to six hours the working day of all workers directly engaged in acid engraving or etching. This resolution supplements the provisions of the decree prescribing shorter working hours for workers employed in industries dangerous or injurious to health (*Journal* No. 6, of 19 January 1951) and amended by Decree (*Journal* No. 8, of 21 January 1953). That earlier legislation had reduced the working day of several categories of workers and employees to five, six or seven hours, according to the nature of their work.

(c) The lists, which appeared in 1954, enumerating the intellectual workers entitled to extended paid holidays pursuant to article 33 of the Workers' and Employees' Holidays Order, and the performers and artists employed in the theatre, opera, wireless, cinema, State Philharmonic, symphony orchestras, state choirs, concert groups and circuses, who enjoy this right under article 34 of the same order.<sup>1</sup>

## 7. Social Security

In the People's Republic of Bulgaria, the State has acted in various directions to improve the living standards and social conditions of the working masses. A substantial number of statutory rules and orders which came into force in 1954 widened the scope of this welfare machinery.

(a) In the matter of *pensions* and other benefits, the Government has fixed the scale of contributions payable by undertakings and enterprises employing insured persons (*Journal* No. 87, of 29 October 1954). The contributions are payable at the rate of 12 per cent of the worker's pay or salary. Workers and employees receive pensions and other benefits prescribed by the Labour Code even if the undertaking, enterprise or organization has, for some reason, failed to pay the necessary contribution (Labour Code, art. 149).

Very important provisions concerning the actual right to a pension and the amount thereof are contained in the regulation concerning the classification of occupations for pension purposes, made pursuant to articles 166 and 174 of the Labour Code (*Journal* No. 4, of 30 January 1953). The regulation defines the three categories of occupation (very heavy, heavy and the residuary category) referred to in article 166. Under article 174, workers in the first category now qualify for an old-age pension (retirement) after fifteen years of work and upon reaching the age of fifty; those in the second category after twenty years of work and upon reaching the age of fifty-five; and those in the third category after twenty-five years of work and upon attaining the age of sixty (men) or fifty-five (women).

Another instrument issued in 1954 was the order concerning mutual insurance of members of workers' production co-operatives (*Journal* No. 17, of 26 February 1954), under which the system of social

<sup>1</sup> See the statutory rules and orders concerning holidays made pursuant to the Labour Code; Workers' and Employees' Holidays Order (*Journal* No. 58, of 11 July 1952); Instruction concerning the application of the Workers' and Employees' Holidays Order (*Journal* No. 50, of 23 June 1953). Pursuant to these texts, every worker or employee who has served for at least eleven months without interruption is entitled to fourteen days' paid holiday. Articles 33 and 34 of the same order provide that intellectual workers are entitled to extended holidays of not less than twenty-six or more than forty-eight working days, while performers and artists are allowed thirty to forty-two and twenty-six to forty-two days respectively. The lists cited in the text indicate the specific categories of workers and employees entitled to extended annual paid holidays under the order.

insurance (pensions and assistance during temporary incapacity) became applicable generally to artisans who are members of workers' production co-operatives.

(b) The decree concerning the encouragement and promotion of co-operative and individual housing construction (*Journal* No. 28, of 6 April 1954) empowers the executive committee of people's councils, with the approval of the Minister of Collective Farming, to grant building licences valid for an indefinite period (for valuable consideration or otherwise) authorizing the construction of premises on state land. The person who builds the premises under the licence acquires the ownership of the premises and also the usufruct in the land covered by the licence.

(c) In keeping with the policy of broadening the scope of the nation-wide system of free medical assistance for the entire population, it is provided (decree concerning universal free medical assistance, *Journal* No. 23, of 23 March 1951, and resolution of the Council of Ministers of 24 June 1954, *Journal* No. 52, of 29 June 1954) that state social insurance agencies attached to the Central Council of Professional Trade Unions are responsible for all or part of the cost of remedial feeding required by workers and employees.

(d) Another important enactment of 1954, the regulation concerning social assistance (*Journal* No. 68, of 24 August 1954), further liberalizes the system of social assistance. Provision is made for three principal forms of assistance: (a) placement of labour; (b) organization of social welfare centres; and (c) assistance in cash or kind. Extracts from the regulation are cited below.

#### 8. Right to Education

The principal instrument which entered into force in 1954 was the National Education Decree (*Journal* No. 90, of 9 November 1954). The basis of the educational system is the provision of free and compulsory education up to the seventh grade (for children aged seven to fifteen). The decree also guarantees the right of groups of non-Bulgarian ethnic origin to receive instruction in their mother tongue and provides for

the establishment of a variety of educational institutions adapted to the needs of the children. It also creates opportunities for workers to attend special classes and to receive both elementary and secondary education without interrupting their employment.

The principal provisions of the National Education Decree are cited below.

As regards higher education, the year 1954 saw the publication of the regulation concerning correspondence courses in institutions of higher learning (*Journal* No. 96, of 30 November 1954). This regulation and the regulation concerning non-resident students in institutions of higher learning, which entered into force in 1953 (*Journal* No. 39, of 15 May 1953), are the two main enactments giving working citizens a guaranteed opportunity of acquiring a higher education without interruption of employment.

In Bulgaria, one of the means whereby the state ensures that citizens may genuinely avail themselves of the right to complete the different stages of education is the award of a wide variety of scholarships to the sons and daughters of workers, working farmers and employees, in cases in which such children are in need of material assistance and have obtained good results in the school year. The relevant provisions are embodied in the regulation governing scholarships to general schools, teachers' colleges, secondary vocational schools, technical institutes, high schools and institutions of higher learning (*Journal* No. 8, of 26 January 1954).

## II

In the field of the defence of human life and the peaceful development of mankind, Bulgarian legislation has made its contribution through the enactment of a special Defence of Peace Act (*Journal* No. 6 of 1951). The Bulgarian legislator has thus shown his concern for the defence of human rights at the international level and thereby set the pattern to be followed by the ordinary domestic legislation. The text of the Act is cited below.

### DEFENCE OF PEACE ACT<sup>1</sup>

*Art. 1.* Instigation to war or war propaganda shall be the most heinous crime against peace and the people.

*Art. 2.* If a person, by word of mouth or through the press, radio or any other means, utters or causes to be uttered any statement designed to provoke an armed attack by one State upon another, that person shall be guilty of instigation to war.

*Art. 3.* If a person, by word of mouth or in writing,

or through the press, radio, film, theatrical production, literary or artistic work, or by any other means whatsoever, advocates an increase in armaments or the use of atomic, hydrogen, chemical or bacteriological weapons, or preaches or disseminates doctrines of racial discrimination, with a view to provoking a war or the mass annihilation of any people or group, or engages in any similar activity with a view to instigating military, economic or ideological preparations for an act of aggression, that person shall be guilty of war propaganda.

<sup>1</sup> See immediately above.



*Art. 4.* Any person who commits, instigates or abets the offence described in article 2 shall be punishable by rigorous imprisonment for life.

Any person who commits, instigates or abets the offence described in article 3 shall be punishable by rigorous imprisonment for a term not exceeding fifteen years.

Any person convicted pursuant to this Act shall forfeit his rights in accordance with article 30 of the Penal Code, and all or part of his property may be confiscated.

This Act shall enter into force on the date of its publication in the *Journal of the Presidium of the National Assembly*.

## REGULATION CONCERNING SOCIAL ASSISTANCE<sup>1</sup>

### A. PLACEMENT SERVICE

4. The function of the placement service shall be to find suitable work and to provide training or re-training, on the advice of the Joint Medical Examination Board, for handicapped workers within the meaning of articles 2, 14 and 16 of the Social Assistance Decree and for all persons disabled in consequence of accidents, illness, congenital disability or any other similar cause, even if such persons are not entitled to a pension. All decisions regarding disability shall be within the competence of the Joint Medical Examination Board.

8. The employment of disabled persons in disability groups I, II and III shall be organized by a disabled workers' production co-operative, established in accordance with the procedure and in the manner prescribed in the model statute of co-operatives approved by resolution No. 374 of the Council of Ministers, of 24 June 1953, and subject to the conditions set forth therein.

9. With a view to placing disabled persons of every group in suitably light employment, district people's councils of workers' representatives and municipal people's councils assimilated thereto shall organize special workshops and sections attached to multiple industrial concerns, in accordance with article 6 of the Social Assistance Decree.

### B. ORGANIZATION OF SOCIAL WELFARE CENTRES

16. The term "social welfare centres" includes the following:

- (a) Homes for war invalids and persons disabled in the struggle against fascism;
- (b) Homes for children with severe physical or mental handicaps;
- (c) Homes for the blind;
- (d) Homes for deaf-mutes;

- (e) Homes for the aged;
- (f) Homes for persons unfit for work;
- (g) Homes for apprehended mendicants;
- (b) Reception and distribution homes.

17. Social welfare centres may organize model farms and workshops with a view to providing vocational training for children and young persons with serious physical or mental handicaps and in order to keep the inmates actively employed;

### C. ASSISTANCE IN CASH OR KIND

33. The following persons are eligible for assistance in cash or kind:

(a) War invalids, persons disabled in the struggle against fascism and their families;

(b) Children and young persons under the age of eighteen years who have lost one parent or both parents;

(c) Children and young persons under the age of eighteen years who are in moral danger;

Children and young persons shall be deemed to be in moral danger if both their parents are suffering from a serious disease or serving a sentence or are otherwise prevented from exercising the necessary control and care over the education and upbringing of the children;

(d) Children under the age of fourteen years who are suffering from a serious physical or mental handicap, as evidenced by a medical certificate;

(e) Blind persons and deaf-mutes;

(f) Aged persons who are unfit for work or destitute;

An "aged person unfit for work" means any man over the age of sixty and any woman over the age of fifty-five who, by reason of a general decline in physical strength or of illness, as duly certified by a medical practitioner, is unable to perform normal work in industry, in an office or elsewhere;

An aged person shall be deemed "destitute" if he or she has no spouse, son or daughter to care for his or her welfare;

(g) Persons injured in the course of duty while on peace-time military service;

<sup>1</sup> See above, p. 28.

(b) Persons injured in an air raid or in consequence of an air raid;

(i) Persons injured since 9 September 1944 in the struggle to safeguard the people's authority;

...

(j) Families of persons completing their statutory service in the armed forces or in the labour force, if the persons in question are the only members of their family fit for work and maintain the unfit members thereof by working; a father shall be entitled to assistance if he has attained the age of sixty or, regardless of his age, if he is an invalid in disability group I or II, and a mother shall be entitled thereto if she has attained the age of fifty-five or, regardless of her age, if she is an invalid in one of the said groups;

In exceptionally serious cases, after the matter has been considered and decided by the executive committee of the people's council or workers' representatives, assistance may also be given to the family of a service man who, although not the only member of the family fit for work, contributed to the upkeep of at least two members thereof who were unfit for work (brother, sister, mother, father, spouse with an infant of less than one year, grandfather and grandmother);

Brothers and sisters of a service man who have not reached the age of sixteen or, if still receiving education, the age of eighteen, as well as spouses with infants, shall as a general rule be regarded as unfit for work;

...

(k) Persons unfit for work who are unable to support themselves from their resources and have no parents or near relatives required to provide for their support pursuant to article 112 of the Act concerning personal and family relations;

(1) Needy aliens residing in the country.

...

#### D. TOTAL OR PARTIAL PAYMENT FOR SPA TREATMENT

46. People's councils of workers' representatives shall defray all or part of the cost incurred by any

person referred to in section 33 of this regulation, other than a person listed in paragraph (j), in respect of treatment in a spa sanatorium, or balneotherapeutic or pelotherapeutic establishment.

#### E. SCHOLARSHIPS FOR CHILDREN WHO HAVE LOST ONE PARENT OR BOTH PARENTS IN THE WAR OR IN THE STRUGGLE AGAINST FASCISM

53. Children who have lost one parent or both parents in the war or in the struggle against fascism and who lack sufficient means shall receive a monthly allowance (scholarship) for their education until they attain the age of eighteen.

#### F. BUILDING PLOT AND HOUSING PRIVILEGES

61. People's councils of workers' representatives shall, as a matter of priority, assign to homeless persons disabled in the war or in the struggle against fascism, and to their widows who have children, the life tenancy of free plots whereon the recipient may erect his own house.

#### G. OTHER PROVISIONS

66. Persons disabled in the war and in the struggle against fascism shall receive, free of charge, all the necessary orthopaedic equipment, artificial limbs, prosthetic apparatus, surgical footwear and similar appliances, the cost of which shall be defrayed by the Pensions Administration.

...

70. No person in the People's Republic of Bulgaria may solicit alms in any manner whatsoever.

Any person apprehended in the act of begging who is fit for work or whose fitness is only partially impaired shall be put to work; those unfit for work shall be placed in social welfare centres.

### NATIONAL EDUCATION DECREE<sup>1</sup>

#### I. BASIC PROVISIONS

1. Every citizen of the People's Republic of Bulgaria shall have the right to education. Education shall be secular and equally accessible to all citizens, regardless of sex, ethnic origin or race. Educational institutions shall be administered by the State.

...

2. Elementary education (from the first to the seventh grade) shall be free of charge and compulsory for every child who is a Bulgarian citizen between the ages of seven and fifteen.

3. In order to ensure that the population may effectively avail itself of the right to education, the State shall establish and maintain the necessary types and categories of educational and training institution, residential and recreational facilities, children's homes, scholarship funds, and the like.

<sup>1</sup> See above, p. 28.

For the benefit of members of the population who are not of Bulgarian ethnic origin, the State shall establish and maintain schools in which instruction shall be given in their mother tongue; the teaching of the Bulgarian language shall, however, be compulsory in all cases.

## II. TYPES OF EDUCATIONAL AND TRAINING INSTITUTION

### *Pre-school Training Institutions*

...

6. General education shall be provided in schools of general study. These schools shall be organized in the following categories: basic (grades I-IV), elementary (grades I-VII) and secondary (grades I-XI). Where necessary, the authorities may also establish higher elementary schools (grades V-VII) and high schools (grades VIII-XI).

Any pupil in grades I-XI who has a predisposition to pulmonary or other ailments shall be placed in a special resort school with boarding facilities.

Children with physical or mental handicaps (deaf-muteness, blindness, retarded development, etc.) shall be placed in special schools with boarding facilities. The school curriculum in these schools shall include vocational training as well as general education,

and may be extended beyond the period applicable in other schools of general study.

...

8. With a view to the encouragement of education among workers, the State shall establish schools where they may receive instruction without interrupting their employment.

9. Workers enrolled at schools of general study may complete either special courses or their whole elementary and secondary education without attending as regular pupils, by preparing for their examinations privately, by correspondence or in a non-resident capacity.

10. Elementary and secondary courses of education shall both lead up to an examination. Every pupil who passes the examination shall receive a certificate, which shall entitle him to continue his education in an institution of the next higher category.

...

## III. GENERAL PROVISIONS

...

19. In preparing plans for inhabited localities, people's councils shall set aside suitable sites for the construction of buildings to house educational and training institutions.

# UNION OF BURMA

## THE DEVELOPMENT OF HUMAN RIGHTS<sup>1</sup>

### I. CONSTITUTIONAL PROVISIONS<sup>2</sup>

The fundamental rights guaranteed to the citizens of the Union of Burma are enumerated in Chapter II of the Union Constitution. Of the fundamental rights embodied in the Constitution, sections 13, 14, 15 and 16 are of particular importance, while section 20 (1) needs clarification. Section 14 guarantees equality of opportunity and section 16 guarantees the inviolability of property. Section 20 guarantees freedom of religion, but it is followed by explanation(1) which is probably aimed at political propagandists who come under the guise of missionaries. As to the rights laid down in section 17 the only condition attached to them is "subject to law, public order and morality". Section 23(4), which limits private property "in accordance with law" and section 30, which declares that "the State is the ultimate owner of all lands" should be read with section 23 (1) which guarantees the right of private ownership and of private initiative in the economic field. The Constitution further protects the fundamental rights assured to the citizens by means of constitutional remedies. The Supreme Court of the Union is vested with powers to issue prerogative writs appropriate to the fundamental rights guaranteed by the Constitution. The right to enforce these remedies cannot be suspended except in times of war, invasion, rebellion, insurrection or grave emergency, in the interest of public safety.

Section 33 of the Union Constitution, Chapter IV, further assures to the citizens certain rights in that "the State shall direct its policy towards securing to each citizen" such rights. No doubt they are not affirmative pronouncements; nor is there an affirmative duty on the State to enforce these rights. Yet it is by means of these policies that the Union of Burma contemplates bringing about the development of the country's resources, with a constant eye to the benefit of the people in the essentials of life—namely, food, clothing, standard of living, and the pursuit of happiness. The policies are to make the citizens of the Union realize that they can better their lot and advance towards the goal of social justice and political and economic freedom under law and order and in a democratic fashion. This is the national *credo* as expressed in the Constitution.

<sup>1</sup> Note prepared by U Nyun Tin, B.A., B.L., LL.M., of the Office of the Attorney-General of the Union of Burma, government-appointed correspondent of the *Yearbook on Human Rights*.

<sup>2</sup> See *Yearbook on Human Rights for 1947*, pp. 64-68, for 1951, pp. 27-29 and for 1953, p. 31.

A true picture of the wider extent to which basic human rights and freedoms are to be fostered in the Union of Burma would include, in addition to the data contained in the previous reports and the present report, the schemes, policies and Acts which will come into operation in the near future—such as, for example, the Democratization of Local Administration and the Welfare State Scheme.

### II. INTERNATIONAL INSTRUMENTS

The new pressing demand for popular education in international affairs and the increase of popular control over national conduct by the world community have caused the people of the Union to acquire a just conception of their international rights and duties; at least a sufficient number of the community are intelligently familiar with international law and affairs to lead and form public opinion upon all important international questions as they arise.

In the year under report, the Convention on Political Rights of Women was signed by the Permanent Representative of Burma to the United Nations on 14 September 1954; and, in compliance with resolution 833 (IX) of the General Assembly, adopted at its 504th plenary meeting, on 4 December 1954, the Union Government has forwarded its comments and suggestions on the United Nations draft covenants on human rights. The Union Government is at present negotiating with the People's Republic of China with a view to entering into a treaty relating to dual nationality. Other reciprocal agreements which the Union Government contemplates entering into are an extradition treaty with Ceylon and agreements on the transfer of national prisoners (with Pakistan), the service of documents and the taking of testimony (with the United Kingdom), and reciprocal judicial aids (with Japan and the Philippines).

### III. LEGISLATION

(a) *Health*: The Union Welfare Conference held by the Union Government at Rangoon in August 1952 evolved a comprehensive national health programme to meet specific causes that undermine the health of the nation.

The campaigns to prevent illness and premature death which commenced in 1952 serve as spearheads of an immediate attack on preventable illness and death. The campaigns will spread over a period of five years and will eventually merge into permanent health

measures of the country. The programme falls into six major sections, as follows: (1) anti-malaria; (2) anti-venereal disease; (3) anti-tuberculosis; (4) maternal and child welfare campaign; (5) environmental sanitation, and (6) anti-leprosy campaign.

In addition to these campaigns, the Union has a carefully organized and effective nation-wide system of health services which have started in three directions, as follows:

(1) *Hospitals*: With a view to providing maximum medical relief to the people throughout the length and breadth of the Union, the Government has nationalized the local fund hospitals, 147 in all, in two batches from 1 April 1952 to 1 October 1953. These nationalized hospitals are being equipped with men and materials at state expense and according to bed-strength. There is a scheme for the construction of ninety-seven more hospital and dispensary buildings under the Pyidawtha (Welfare State) Scheme. The construction of some of the buildings has already started, while construction of others will start in 1954-55.

(2) *Rural Health Centres*: Below the township hospitals, under the scheme, will be a series of rural health centres where principally preventive and only a very limited amount of curative medicine will be practised. There will be a rural health centre for every fifteen village tracts with a population varying from 15,000 to 40,000. So far, 120 rural health centres have been established, and not less than 100 more will be established during 1954-55. The Union will require approximately 800 health centres, and to establish them all will take some years.

(3) *School Health Service*: Although this service started only in 1953, the way was paved by the Child Health Service in 1951. To assume the over-all responsibility for maternal, child and school services in the Union, a single new division—namely, M.C.H. and School Health Division—has been created in the recently reorganized Health Services Directorate. This division has taken over the responsibilities which were previously vested in two separate directorates—namely, Women and Children Welfare and Child Health Service.

(b) *Economic and Educational Measures*: (1) *Lands*: The Land Nationalization Act 1948 was passed by the Union Parliament on 11 October 1948. After having introduced some necessary amendments, the Land Nationalization Act 1953 was enacted and enforced *throughout the Union of Burma with effect from 22 June 1953*. The principal object of land nationalization, briefly speaking, is not only to put an end to land-lordism and set up peasant proprietors, but also to introduce, through systematic distribution of lands, and modern methods of cultivation coupled with rural development, a new economic and social life for the peasants. To provide for the payment of compensation for agricultural lands taken over, the Land Nationalization (Amendment) Act 1954 was passed by the Union Parliament during its session in February 1954

and a ten-man commission was also appointed under section 44(1) of the Land Nationalization Act 1953 to advise the Government in connexion with the manner of payment of compensation under this Act. Rules have been drawn up and are being scrutinized with regard to the payment of compensation in due course. The Land Nationalization work will be followed by development schemes for the cultivators, by the formation of agricultural organizations such as Mutual Aid Teams, Agricultural Producers' Co-operatives, etc., in the areas where the land has been distributed. Rules are being made for the formation and control of agricultural organizations as provided for in section 13 of the Act. Agricultural lands amounting to 142,737.21 acres in eight townships were taken over and distributed; arrangements are now being made for the taking over of 5,426,789 acres in 977 village tracts in twenty-nine townships during the year 1954-55. The Land Nationalization programmes for 1955 have already been drawn up and arrangements have been made to implement these schemes successfully with a view to creating a new economic and social life for all the agriculturists in the rural areas.

(2) *Access to Commercial Activities*: During 1954, the Ministry of Trade Development made steady progress in many fields. One of its main functions is to develop commerce and to assist and encourage Burmese nationals to take a more active part in trade with foreign countries. The Union Government entered into bilateral trade agreements with the Governments of Japan and the People's Republic of China in December 1953 and April 1954 respectively. Under a new government order (the Registration (Importers and Exporters) Order, 1954), only persons, firms or companies registered by the Importers and Exporters' Registration Board, functioning under the Trade Development Ministry, are allowed to continue in the import-export business in the Union of Burma. The order is also intended to assist and encourage Burmese nationals to participate more actively in the import and export trade of the country. (As a further step to give all-out support to Burmese nationals in commercial business, the Government has passed the Burma Companies (Amendment) Act 1955.<sup>1</sup> The effect of the Act is that foreign firms will be differentiated from those of Burmese nationals and that they will be required to furnish full information on their policies and to obtain permits from the President of the Union of Burma before they start business in the Union of Burma.)

(3) *Mass Education*:<sup>2</sup> In October 1948, the Union Parliament enacted the Mass Education Act, and thus there came into being the Mass Education Council, an organization dedicated to the promotion of the fundamental education of the rural masses, who form 80 per cent of the population, based on a scheme suited to the life and notions of the people.

<sup>1</sup> Act No. 23 of 1955.

<sup>2</sup> See *Yearbook on Human Rights for 1953*, p. 32.

The training of personnel began in October 1949 with a view to implementing the programme of work. The principal subjects comprise: (1) the ideals of mass education; (2) voluntary service work; (3) Burmese way of life; (4) democracy; (5) adult education; (6) health and rural hygiene; (7) rural economy; (8) rural development; (9) physical fitness and athletic games; (10) cottage industries; (11) world affairs; and (12) the functions of government departments. In addition to these subjects, women personnel are given practical training in housewifery and domestic science. The total strength of mass education organizers is now spread throughout the whole Union in 280 centres. Though it is still too early to assess their work, the fact that these teams have favourably established themselves is indicative of a very hopeful future.

(4) *Labour*: The primary duty of the Directorate of Labour is to give effect to the policy outlined in the plan for economic development of Burma in so far as matters pertaining to labour are concerned and to obtain the Government's approval to expand it according to the needs of this policy. The Standing Joint Labour Board not infrequently discusses questions relating to conditions of labour and labour policy. On the recommendation of the committee, two labour Acts—namely, the Oilfield (Labour and Welfare) (Amendment) Act, 1953, and the Factories (Amendment) Act, 1953—have been brought into force. Recommendations concerning the following matters have been submitted for the Union Government's consideration by the committee: (1) new rules framed under the Workmen's Compensation Act; (2) amendment to the Leave and Holidays Act to secure that all employees in the service of the Government or of any board or local authority, in respect of whom leave and holidays with wages or pay, as the case may be, are not provided under any law or rules, may be brought within the scope of the Act; (3) addition of a penal provision in section 85 of the Factories Act with a view to providing, in cases where overtime has been worked without permission, for payment by the manager or the occupier of a fine, and for liability to imprisonment. One of the branches of the Directorate of Labour, the Industries Relations Section, keeps abreast of all labour laws and labour standards and has the task of minimizing disputes relating, for instance, to wages, hours of work and discontentment with working conditions, through the medium of settlement by negotiation and conciliation. In addition, a small percentage of disputes are referred to the Court of Industrial Arbitration, which was constituted by the Government of the Union of Burma in accordance with the provisions of the Trade Disputes Act 1929, as amended.

During the year 1954, the Government took positive steps to ratify more International Labour Conventions, ratifying Convention No. 26, concerning the Creation of Minimum Wage-fixing Machinery, and Convention No. 52, concerning Annual Holidays with Pay (three other important International Labour Conventions—namely, Convention No. 87, concerning Freedom of

Association and Protection of the Right to Organize, Convention No. 63, concerning Statistics of Wages and Hours of Work, and Convention No. 29, concerning Compulsory or Forced Labour, were ratified by the Union Government in 1955).

#### IV. THE JUDICIARY

In the Union of Burma, respect for the judiciary is everywhere maintained and expressed. Every citizen is assured that the judiciary in its independent position will stand between him and injustice from whatever quarter that injustice may come. The fundamental freedoms embodied in the articles of the Union Constitution are zealously guarded, whilst the safety and security of the Union are maintained and preserved.

The judges of the High Court and the Supreme Court come to their high offices after spending many years of their lives in practice in the courts or experience on the bench;<sup>1</sup> they are learned in the law not only through reading, but also through actual conduct of cases of every kind in the courts. In the exercise of their judicial functions they are subject only to the Union Constitution and the laws.<sup>2</sup>

The number of judges has grown since the achievement of independence, and there never was a time when the vital independence of the judges was more important than now. The power of the State continues to increase, and it is essential in a time of change that the true balance should be kept between the State and the individual. The independence of the judges, therefore, carries with it immense responsibilities: these responsibilities are not confined to deciding cases without fear or favour, affection or ill-will,<sup>3</sup> but also the responsibility of being careful to see that they confine their duties to their own special sphere; they have no concern with the political complexion of any particular Parliament or with the policy of any particular Government. They are the interpreters of the law and are concerned with the law only. Between the Judiciary and the Parliament there is a mutual respect and confidence and this is achieved by the Judiciary's and Parliament's observing strictly the limits of their respective spheres of work.

#### V. JUDICIAL DECISIONS<sup>4</sup>

The Supreme Court has held that "an attempt to assume non-existent powers of punishment, especially by a public authority, sponsored or recognized by the Government, should be subject to the control of this court in the exercise of its powers to safeguard fundamental rights of a citizen under section 25 of the

<sup>1</sup> Section 142 of the Union Constitution.

<sup>2</sup> Section 141 of the Union Constitution.

<sup>3</sup> Section 139 of the Union Constitution.

<sup>4</sup> In the year under report there has been no case of importance where the Supreme Court has been called upon to decide questions relating to international law. See *Yearbook on Human Rights for 1953*, pp. 33-34.

Constitution".<sup>1</sup> In this case, the applicant was a member of the Pali Education Board constituted by the Education Department notification No. 241 of 5 April 1948. The applicant was nominated to the Board by a certain monastery, Mandalay. Among the other members of the Board were also nominees and representatives of other religious institutions or monasteries. Thus it was clear that the Board, though its constitution was notified by the Government of the Union, was mainly an elective body entrusted with the duty of promoting Pali education and holding examinations in the Pali scriptures. The Board made certain regulations to govern the conduct of the examinations, and in these regulations it provided for the prevention of corrupt practices at the examinations. In the examination held by the Pali Examination Board, 1950, there was leakage of some questions in the examination papers on certain subjects. The report on inquiries instituted by an officer of the Criminal Investigation Department implicated the applicant. A charge was framed against the applicant in relation to

the leakage of questions, against which the applicant defended himself. The applicant was found guilty and expelled from the Board, which disqualified him for life from being re-elected to the Board. It was this decision of the Board that the applicant sought to have quashed, submitting an application under section 25 of the Union Constitution for directions in the nature of *certiorari*. The court held that: "The principle that power to make any appointment implies the power to dismiss the person so appointed cannot be invoked to justify the action of the Board . . . the regulations made by the Pali Education Examination Board under which the Board purported to hold an inquiry to adjudge the applicant's responsibility in relation to the leakage of question papers lack statutory or other legal force . . . it acted in excess of its powers and without any legal authority . . . it appears to us that an attempt to assume non-existent powers of punishment, especially by a public authority, sponsored or recognized by the Government should be subject to the control of this court in the exercise of its powers to safeguard fundamental rights of a citizen under section 25 of the Constitution." The proceedings were quashed.

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<sup>1</sup> Civil Misc: Application No. 9 of 1951.

## BYELORUSSIAN SOVIET SOCIALIST REPUBLIC

### ACT CONCERNING THE STATE BUDGET OF THE BYELORUSSIAN SOVIET SOCIALIST REPUBLIC FOR 1954

adopted at the fourth session of the Supreme Soviet of the Byelorussian SSR, on 4 June 1954

#### EXTRACTS<sup>1</sup>

*Art. 4.* The total sum of 2,737,027,000 roubles, representing an increase of 125,415,000 roubles over the corresponding figure for 1953, shall be appropriated for social and cultural activities in the State Budget of the Byelorussian Soviet Socialist Republic for 1954. Expenditure on the different branches of social and cultural activity shall be apportioned as follows:

(a) Education and culture: Expenditure on primary, seven-year and secondary general education schools, technical and other specialized secondary education establishments; higher education institutions and scientific and research establishments; workshop and factory apprenticeship schools, courses and other activities designed to raise the qualifications of workers; collective farm workers and engineering and technical

workers; libraries, halls and homes for cultural activities, clubs, theatres, the press and other educational and cultural activities: a total of 1,826,467,000 roubles;

(b) Public health and physical culture: Expenditure on hospitals, dispensaries, maternity homes, crèches, sanatoria and other establishments for the medical care of the population; sport and physical culture: a total of 743,278,000 roubles;

(c) Social security and social insurance: Expenditure on pensions and assistance for disabled workers and their families, recipients of personal and other pensions; the maintenance of homes for the disabled; lump-sum assistance payments to disabled veterans of the Patriotic War and their families and the provision of artificial limbs: a total of 167,282,000 roubles.

### REPORT OF THE STATISTICAL BOARD OF THE BYELORUSSIAN SOVIET SOCIALIST REPUBLIC ON THE FULFILMENT OF THE STATE PLAN FOR THE DEVELOPMENT OF THE NATIONAL ECONOMY OF THE BYELORUSSIAN SOVIET SOCIALIST REPUBLIC IN 1954

#### EXTRACTS<sup>1</sup>

In 1954, heavy industry continued to expand. The output of mass consumption goods was increased, and woollen, cotton and linen fabrics, hosiery, carpeting, radio sets, metal beds, sewing machines, vegetable oils, meat, sugar, cigarettes, tobacco and other industrial goods and foodstuffs were produced in quantities exceeding those provided for in the annual plan.

In 1954, there was a further improvement in the work of establishments offering miscellaneous services to the population. Many premises housing several such establishments and large specialized establishments were built.

In 1954, the volume of capital investment by the Union Republic and Republic ministries and depart-

ments of the Byelorussian SSR was 138 per cent of the figure for 1953; in particular, in the consumer-goods industry it was 142 per cent, in agriculture (not including the construction of machine-tractor stations) 149 per cent, in trade 161 per cent, as regards the Ministry of the Local and Fuel Industry of the Byelorussian SSR 146 per cent, and the Ministry of Motor Vehicle Transport and Highways of the Byelorussian SSR 155 per cent.

The volume of capital investment in housing construction was 143 per cent in 1954 as compared with 1953—the construction carried out by the local soviets amounting to 182 per cent, the construction of schools to 143 per cent, the construction of hospitals and polyclinics to 136 per cent, and that of kindergartens and crèches to 341 per cent.

In 1954, state capital investments for the construction of machine-tractor stations in the Republic was 6.6 times that in 1953.

The capital investments of the co-operative organi-

<sup>1</sup> Russian text received through the courtesy of the Permanent Delegation of the Union of Soviet Socialist Republics, acting on behalf of the Ministry of Foreign Affairs of the Byelorussian Soviet Socialist Republic. English translation from the Russian text by the United Nations Secretariat.



zations increased substantially in 1954, and as compared with 1953 amounted to 237 per cent for the Byelorussian union of consumers' societies and 128 per cent for the Byelorussian council of trade co-operatives.

The Ministry of Town and Country Construction of the Byelorussian SSR carried out 31 per cent more contracted construction and repair work than in 1953. The Ministry's capital investments in private dwelling construction, for expansion of its own means of production and increasing its stock of building machinery and equipment, were 84 per cent greater than in 1953, while the building of dwellings for builders increased by 75 per cent.

The expansion of Soviet trade continued in 1954. The annual retail trade turnover plan for 1954 was fulfilled by the trading organizations of the Byelorussian SSR to the extent of 105 per cent, the Ministry of Trade of the Byelorussian SSR fulfilling the plan in respect of local sales to the extent of 102 per cent and the Byelorussian consumers' co-operatives to the extent of 111 per cent. The network of state and co-operative trading organizations and organizations supplying food to the public in the cities and villages of the Byelorussian SSR was expanded in 1954.

The latest—the seventh in succession—reduction in the state retail prices of staple foodstuffs and manufactured articles of mass consumption, instituted on 1 April 1954, promoted a further stabilization of Soviet

currency and a further rise in the population's level of living.

The volume of retail trade expanded substantially in 1954 as compared with 1953. In 1954, state and co-operative trade organizations sold to the population greater quantities than in 1953 of the following products: meat, fish and fish products, animal fats, vegetable oils and other edible fats, sugar, confectionery, cotton, silk, and woollen fabrics, garments and knitwear, hosiery, furniture, sewing machines, radio sets, bicycles, clocks and watches, and building materials.

Sales of potatoes, pork, mutton, eggs and other agricultural products to the population in the collective farm markets of the cities of the Byelorussian SSR increased in 1954.

The development of culture and health protection continued in the Byelorussian SSR in 1954.

The number of secondary schools in the republic increased by 14 per cent in 1954 by comparison with 1953, the number of pupils in the eighth to the tenth grades increasing by 12 per cent.

The network of children's institutions and pioneer camps was expanded in 1954.

The number of public libraries, clubs and cinema installations increased.

Further improvements were achieved in medical, health and preventive services. The network of hospitals, maternity homes and other medical institutions was expanded.

# CAMBODIA

## NOTE<sup>1</sup>

There were no judicial decisions during 1954 in Cambodia having a particular importance in relation to human rights. The achievement of independence continued to give rise to considerable legislative activity, but, with the exception of the text appearing below, no law adopted in 1954 concerned human rights

<sup>1</sup> Note based upon information kindly furnished by the Minister of Foreign Affairs of Cambodia.

in particular. Mention may be made, however, of the initiation of legislation on family allowances, on the reform of the legal status of women in Cambodia, aimed at ending legal inequalities between spouses, and on rent reform. The intention of this last-mentioned process of reform is to ensure the right of every citizen of Cambodia to a home and to the possibility of becoming its owner.

## DECREE (*KRAM*) No. 855-NS RELATING TO MEASURES FOR THE INTERNMENT OF PRISONERS OF WAR AND MILITARY INTERNEES

Dated 4 March 1954<sup>1</sup>

*Art. 1.* Whenever, by special *kret*, a state of emergency is declared, certain measures for administrative internment may be taken, as follows:

*Art. 2.* Persons captured in the course of military operations or arrested by intelligence officers or by the civil authorities on account of their political activities or of collaboration with the enemy are liable to internment in camps under the supervision of the military authorities.

*Art. 3.* Persons interned will be designated by the general term "military prisoners and internees", and divided into:

A. Prisoners of war;

B. The following categories of military or political-military internees:

- (a) Persons, whether armed or unarmed, belonging to the irregular forces formed by the enemy, participating actively in military operations or capable of so participating;
- (b) Active members of organizations or associations attached to the enemy movement;
- (c) Persons guilty or suspected of so-called subversive activities: propaganda, trading with the enemy, etc....

When it is deemed necessary to institute judicial proceedings, measures for the internment of persons in the last two categories may be taken, for security reasons, in conjunction with the decision to refer the case to the courts.

*Art. 4. Classification of prisoners.* Prisoners will be classified in four categories:

- 1. Prisoners of war;
- 2. Military internees;
- 3. Women military internees;
- 4. Political-military internees.

The first category comprises members of the regular armed forces, including political units;

The second category comprises members of the irregular forces;

The third category comprises women;

The fourth category comprises all insurgents or enemy elements not included in the previous categories.

*Art. 5. Internment Screening Committees.* Internment is primarily a security measure. The only considerations to be taken into account are whether the conduct of operations or military security would be endangered by allowing the persons concerned to remain at liberty or by releasing them.

Every order for internment in a military camp must be accompanied by a decision with reasons. This decision must be based on the results of the investigation or interrogation to which all persons captured or arrested will be subjected by the competent intelligence or security organs, and must be taken by a committee known as a screening committee after examining the documents or, if it considers it necessary, after hearing the persons concerned.

*Art. 6. The Screening Committee.* A screening committee is not a court and cannot pronounce judgement in the legal sense of the term.

<sup>1</sup> French text in the *Journal Officiel* of Cambodia of 4 March 1954. Translation by the United Nations Secretariat.

It is, however, competent to decide whether internment is desirable and, if so, for how long.

The committee is empowered to order either that the case shall be referred to the competent judicial authority, whether civil or military, if a warrant has been issued for the arrest of the person concerned or he is liable to prosecution; or, that the person concerned shall be released, or, that the person concerned shall be handed over to the judicial authorities and interned.

*Art. 7.* Every order for internment shall specify for how long it is to last, and every period of internment may be extended. The duration of the period of internment shall not be communicated either to the person concerned, or to any third party not *ex officio* entitled to know it.

A screening committee may also submit to the competent authorities any proposals it may consider useful.

*Art. 8.* Appeals against decisions of the screening committee may be lodged with the appeals board set up for the purpose in Pnomh-Penh.

Only the Leader of the Royal Government, the chairman of the screening committee and the military authorities are entitled to lodge an appeal.

In the absence of any major impediment, which must be of an exceptional nature, any person captured or arrested must appear before a screening committee within fifteen days at the most.

There shall be a screening committee for each province. The committee shall consist of:

1. The Governor, head of the province (Chairman);
2. The chief law officer of the Crown;
3. An officer of the *Khmer* Royal Army.

The local intelligence officer concerned, or his representative, shall attend meetings in an advisory capacity, and present the report on the case.

Decisions shall be unanimous. Failing unanimity, the case shall be referred to the appeals committee by the chairman within ten days at the most.

*Art. 9.* The appeals committee shall sit at Phomh-Penh. It shall hear all cases submitted to it by the Leader of the Royal Government, the chairmen of screening committees or the military command.

It shall consist of:

The Minister of the Interior or his representative (Chairman);  
 The Minister of Justice or his representative;  
 The Minister of National Defence or his representative;  
 The Chief of the General Staff of the FANK (*Khmer* National Armed Forces) or his representative;  
 A magistrate with the rank of Counsellor in the Sala Vinichhay.

Decisions shall be by majority vote.

...

*Art. 11. Procedure for internment.* Any person captured or arrested, shall, in the absence of any major impediment, be interrogated as soon as possible by the intelligence officer or the competent security organs in order to ascertain his identity and his previous behaviour. The results of the interrogation together with the results of any necessary additional inquiries from the authorities of the place of origin of the person concerned or elsewhere, and the information as to the circumstances of the capture, shall be communicated in so far as they affect its decision, to the screening committee when it meets.

In principle, the intelligence officer of the sub-sector or of the CAIK is qualified to conduct the interrogation of prisoners captured in his sub-sector or province. But, and more particularly in the case of large-scale operations, intelligence officers whose units have captured prisoners should carry out a preliminary interrogation, principally with a view to the speediest possible classification and separation and internment in temporary camps of: (a) prisoners of war and military internees; (b) cadres and troops and dangerous and non-dangerous persons.

Any person captured or arrested shall, in principle, be sent to the temporary camp of the sub-sector where the capture or arrest took place.

Women and minors under sixteen shall be kept apart from other internees.

No person who has been captured or arrested may be retained with, or posted to, any unit or service, for any reason whatever, until a decision has been taken on his case by a screening committee.

The screening committee shall meet, either periodically or whenever necessary, at the request of the territorial command concerned, on the proposal of the intelligence officer.

...

A record shall be kept of every meeting of the screening committee, and shall include the names and numbers of the persons examined, the date of and reason for their capture or arrest, and the decision taken.

Every order of internment shall specify the date of release.

Decisions of the screening committees shall take effect as soon as they are countersigned by the Chief of the General Staff of the FANK.

The screening committee is not competent to order the release of prisoners of war. It can only order either internment (in principle for the duration of hostilities), or reference to a military tribunal.

In the event of disagreement between the members of the screening committee or between the committee

and the military authority responsible for security, the decision shall be referred to the appeals board, in the first case by the chairman of the screening committee and in the second by the military authority concerned. Appeal automatically suspends any decision for release.

### INTERNMENT SYSTEM

*Art. 12.* The system for the internment of persons detained shall comply with the following requirements:

The spirit and, so far as war conditions permit, the letter of the provisions of the Geneva Conventions of 12 August 1949 must be respected; and

Any persons whose return to liberty would render them dangerous on account of their antecedents, character or duties with the enemy must be kept in a position where they can do no harm.

#### A. Prisoners of War

...

#### B. Military Internees

Military internees shall be kept in detention for varying periods, as fixed by the screening committees, and liable to extension.

The minimum period of internment shall be three months, counting from the date of capture or arrest.

According to the results of their interrogation or investigation, internees shall be classified in two categories by the Sixième Bureau or the security organs, and this classification shall determine the conditions of their detention.

A distinction is drawn between internment and employment.

#### (a) Internment

Dangerous persons must be interned separately. They must not be allowed to mix with prisoners of war.

Women shall always be kept in a special camp, or in a separate section of internment camps, with no communication with the rest of the camp.

Minors under sixteen shall, in principle, be kept apart and, so far as possible, away from the influence of other internees.

#### (b) Employment

Military internees may be employed in any of the ways hereinafter specified; but women may not be employed on tasks beyond their physical capacity. Minors under sixteen shall not in principle be employed as labourers.

For security reasons dangerous persons shall be subject to the same restrictions on work outside camps as prisoners of war.

[The sub-sections immediately following deal with food, hygiene, punishments, etc.]

### *Employment of Prisoners and Military Internees on Manual Labour*

*Art. 13.* Prisoners of war and internees classified as dangerous may be employed on manual labour only under the conditions already specified, and may not be taken away from their internment camp.

Other internees may be employed ...

In principle, minors shall not be employed on manual labour, except on tasks fitted to their physical capacities. They are placed in camps only to be given, so far as circumstance permits, military training, together with vocational training in conformity with their aptitudes.

### RELEASE

*Art. 14.* Military internees shall normally be released:

If an order for their release has been given by the screening committee;

If the screening committee has ordered their internment for a specified period.

Internees in the first category shall be released immediately, once the order for release has been signed by the chairman of the screening committee.

With regard to those in the second category, if either their behaviour during internment, or the receipt of new information concerning them, or the political or military circumstances of the moment call for a re-examination of their case, they shall, at the appropriate time and on the proposal of the military authorities, be called before the screening committee, which shall decide whether they are to be released or to be interned for a further period. If, on the other hand, by the date fixed for their release, no new facts have come to light, they shall be released automatically on the proposal of the commandant of the permanent camp and on the order of the Chief of the General Staff of the FANK.

Military internees may be released on grounds of health, in the circumstances specified above, on the order of the Chief of the General Staff of the FANK, if a proposal for release is made by the health services and forwarded by the commandant of the permanent camp.

Military prisoners and internees may be amnestied by royal command.

Proposals made by the camp commandant must refer to prisoners whose conduct has excited no unfavourable comment and whose family situation justifies a measure of clemency.

In principle, this does not apply to dangerous internees.

## CANADA

### HUMAN RIGHTS IN CANADA IN 1954<sup>1</sup>

The major development in 1954 was a complete revision of the Criminal Code, the first revision since the criminal law was codified in 1892. The task of preparing a new consolidated code was begun by a Royal Commission in 1949, and the new Code was adopted only after lengthy study by several parliamentary committees and by Parliament itself.

#### I. FEDERAL LEGISLATION

##### *Revision of the Criminal Code*

A new and revised Criminal Code received royal assent in June 1954 and came into force on 1 April 1955.<sup>2</sup>

Some fundamental principles of the criminal law of Canada are set out in the article by Professor F. R. Scott in the *Tearbook on Human Rights for 1946*.<sup>3</sup> Others appear in the same volume in the article from Great Britain by Sir Cecil Carr, K.C.,<sup>4</sup> which, generally, with some changes in statutory references, might well have been written of Canada, inasmuch as the criminal law of Canada is based on that of England.

The people of Canada live in the Queen's peace, which means that each one has a right to go about his lawful occasions without interference or molestation so long as he respects the rights of others to do the same. The key to the Canadian system may be said to be in section 5 of the new Criminal Code, which reads:

"5 (1) Where an enactment creates an offence and authorizes a punishment to be imposed in respect thereof,

(a) A person shall be deemed not to be guilty of that offence until he is convicted thereof; and

(b) A person who is convicted of that offence is not liable to any punishment in respect thereof other than the punishment prescribed by this Act or by the enactment that creates the offence."

To put it another way, the system is accusatorial rather than inquisitorial. The prosecutor must prove his case beyond reasonable doubt. The accused is not compelled to speak at any stage of the proceedings against him; if he chooses not to give evidence at his trial, neither the judge nor the prosecutor is permitted

to make any comment to the jury upon the fact that he has not done so. Trial by jury on indictable offences is still a fundamental part of the system, although there are wide provisions for trial by a judge or magistrate without a jury with the consent of the accused or, in a few instances involving less serious offences, without his consent. The courts are open except where considerations of order or public morals otherwise require.

The new Code does not make any drastic change. While it provides that a person is not to be charged with an offence at common law, this change is more apparent than real, since several of the most serious common law offences—e.g., public mischief and conspiracy, have been codified. However, the change does mean that no person is to be accused of a crime unless the Criminal Code declares his act or omission to be a crime. It does not mean that there is a complete departure from the principles of English law. In some respects, notably in relation to *habeas corpus*, *certiorari* and the other prerogative writs, English law will apply as it did before. There are changes also that in effect make possible the payment of fines by instalments.

In the new Code the sections relating to sabotage, criminal breach of contract, and wilful damage have attached to them saving clauses to the effect that an offence against them is not committed only by an otherwise lawful stoppage of work. These provisions embody a recognition of the right to strike. On the other hand, the punishment of sedition, increased in 1951, has been raised to a maximum of fourteen years' imprisonment as a measure of protection against an enemy of the State within the State.

##### *Allowances to Disabled Persons*

The Disabled Persons Act,<sup>5</sup> passed at the 1954 session of Parliament and effective from 1 January 1955, provides for a programme of financial assistance to totally disabled persons with the costs shared by the federal and provincial governments.

The Act authorizes the Federal Government to pay half of a pension of up to \$40 a month to a needy person between eighteen and sixty-five years of age who is totally and permanently disabled. To be eligible for a pension, a disabled person must have resided in Canada for the ten years immediately preceding the date on which the payments are to begin and must qualify under the prescribed means test.

<sup>1</sup> Note received through the courtesy of Mr. A. H. Brown, Deputy Minister of Labour, Ottawa.

<sup>2</sup> *Statutes of Canada*, 1954, c. 51.

<sup>3</sup> Pp. 55-57.

<sup>4</sup> Pp. 318-321.

<sup>5</sup> *Statutes of Canada*, 1953-54, c. 55.

Provision for payment of the pensions in any province is made by an agreement between the provincial and federal governments. In 1954, all provinces passed legislation enabling them to enter into such agreements.<sup>1</sup> This is a further step in the national programme of assistance to the disabled, which also includes the development of medical and vocational rehabilitation services.

#### *Territorial Government*

The Northwest Territories Act reported in the *Yearbook on Human Rights for 1952*<sup>2</sup> was brought into force on 1 April 1955. An amendment in 1954<sup>3</sup> increased the size of the Territorial Council to nine members, four of whom are to be elected, and five appointed by the Governor in Council.

## II. PROVINCIAL LEGISLATION

### *Freedom of Religion*

The Freedom of Worship Act of the Province of Quebec was amended<sup>4</sup> to provide that the free exercise and enjoyment of religious profession and worship guaranteed by the Act does not include abusive or insulting attacks against another religious profession. The text of the amendment is appended.

### *Anti-discrimination Legislation*

Legislation designed to prevent discrimination in public places against any person because of his race, creed, colour, nationality, ancestry or place of origin was passed in Ontario.<sup>5</sup> The Fair Accommodation Practices Act, 1954, is a further step in the programme of anti-discrimination legislation which has found expression in several Ontario statutes. Besides its prohibition of the denial to any person on grounds of race or creed of the accommodation, services or facilities available in any place to which the public is customarily admitted, the Act contains provisions prohibiting the publication or display of discriminatory notices, signs or other material, including newspaper and radio advertising. The Act is administered by the Department of Labour, which employs the same procedures for its enforcement as for the Fair Employment Practices Act. These are investigation of the alleged discrimination and an attempt to effect a settlement; where necessary, the appointment of a commission of inquiry; and, as a last resort, prosecution in the courts. The text of the Act is appended.

<sup>1</sup> *Statutes of British Columbia*, 1954, c. 7; *Statutes of Alberta*, 1954, c. 23; *Statutes of Saskatchewan*, 1954, c. 62; *Statutes of Manitoba*, 1954, c. 6; *Statutes of Ontario*, 1954, c. 23; *Statutes of Quebec*, 1954-55, c. 9; *Statutes of New Brunswick*, 1954, c. 41; *Statutes of Nova Scotia*, 1954, c. 11; *Statutes of Prince Edward Island*, 1954, c. 31; *Statutes of Newfoundland*, 1954, c. 74.

<sup>2</sup> P. 20.

<sup>3</sup> *Statutes of Canada*, 1954, c. 8.

<sup>4</sup> *Statutes of Quebec*, 1953-54, c. 15.

<sup>5</sup> *Statutes of Ontario*, 1954, c. 28.

### *Child Welfare*

The Ontario Child Welfare Act, 1954,<sup>6</sup> is a consolidation and revision of the Acts dealing with child welfare in the province. In it are comprised the law concerning adoptions and provisions for protection and care of children who for various reasons do not have the benefits of normal family life. A neglected child may be brought before a court, and, where the need for protection is established, the child is committed to the care of an appropriate agency, either temporarily or until he reaches the age of eighteen years, or twenty-one years in some cases. Under the Act, responsibility for the support of a child found to be in need of protection is made a public responsibility shared by the municipality to which the child belongs and the province.

This type of child protection legislation has been in effect in Ontario for a number of years, and substantially similar legislation is in effect in the other provinces. A change in principle in the new Act is that a child may be found by the court to be in need of protection if he is emotionally rejected or deprived of affection to a degree which is sufficient to endanger his emotional and mental development. Formerly, physical but not emotional neglect was recognized as a reason for taking a child into care.

### *Labour Legislation*

Legislative changes which affect collective bargaining relationships between employers and employees or procedure in the settlement of industrial disputes were put into effect in five provinces. All provinces in Canada have legislation designed to promote collective bargaining in industrial employment and to foster the settlement of disputes without stoppage of work. Under this legislation the right to join trade unions is protected. An employer is required to bargain with a trade union which has been certified as bargaining agent for his employees for the conclusion of a collective agreement to establish conditions of employment binding on both parties for the duration of the agreement. In most provinces, every agreement must contain a provision for the settlement of disputes arising out of the terms of the agreement, and a strike or lockout is generally forbidden while an agreement is in effect. If efforts to negotiate an agreement are unsuccessful, government conciliation services are available and a strike or lockout is prohibited until the procedure for settlement set out in the legislation has been carried out. Without altering the fundamental principles of the legislation, some substantial changes were made in 1954.<sup>7</sup>

In six provinces workmen's compensation laws were amended.<sup>8</sup> In British Columbia, the rate of compensa-

<sup>6</sup> *Statutes of Ontario*, 1954, c. 8.

<sup>7</sup> *Statutes of British Columbia*, 1954, c. 17; *Statutes of Alberta*, 1954, c. 51; *Statutes of Saskatchewan*, 1954, c. 67; *Statutes of Ontario*, 1954, c. 42; *Statutes of Quebec*, 1954, cc. 10 and 11.

<sup>8</sup> *Statutes of British Columbia*, 1954, c. 54; *Statutes of Saskatchewan*, 1954, c. 65; *Statutes of Ontario*, 1954, c. 107;

tion for disability was raised from 70 to 75 per cent of average earnings, and the ceiling placed on yearly earnings for compensation purposes was increased from \$3,600 to \$4,000. The coverage of the Act was extended in British Columbia and also in Nova Scotia. In Quebec, higher benefits to widows and children and an increase from \$3,000 to \$4,000 in maximum yearly earnings were provided for. In Ontario, the Workmen's Compensation Board was given authority to spend \$200,000 a year instead of \$100,000 on the rehabilitation of injured workmen.

A Vacation Pay Act applying to the construction and mining industries was enacted in New Brunswick.<sup>1</sup> It requires a vacation of at least one week with pay to be given after a year of employment. A system of vacation stamps is provided for the benefit of workers who are not employed for a full year by the same employer. New Brunswick is the seventh pro-

vince to pass vacation pay legislation. The New Brunswick Legislature also passed a new Weekly Rest Period Act,<sup>2</sup> requiring employers in the province to give their employees a rest period of at least twenty-four consecutive hours in every seven days.

A new type of safety law was enacted in Ontario to provide protection for workers from the dangers involved in trench excavation.<sup>3</sup> In Nova Scotia, the minimum age for employment underground in coal mines was raised from seventeen to eighteen years.<sup>4</sup>

In Saskatchewan, the Equal Pay Act, 1952,<sup>5</sup> was amended by the Act to Amend the Equal Pay Act, 1954,<sup>6</sup> the following new clause being inserted in section 2: "1a. 'employer' includes Her Majesty in right of Saskatchewan."

<sup>2</sup> *Statutes of New Brunswick*, 1954, c. 16.

<sup>3</sup> *Statutes of Ontario*, 1954, c. 99.

<sup>4</sup> *Statutes of Nova Scotia*, 1954, c. 56.

<sup>5</sup> Reproduced in *Tearbook on Human Rights for 1952*, p. 23.

<sup>6</sup> *Statutes of Saskatchewan*, 1954, c. 69.

*Statutes of Quebec*, 1954-55, c. 8; *Statutes of Nova Scotia*, 1954, c. 6; *Statutes of Newfoundland*, 1954, c. 20.

<sup>1</sup> *Statutes of New Brunswick*, 1954, c. 15.

## Provincial Legislation

### QUEBEC

#### THE FREEDOM OF WORSHIP ACT, 1954

#### AN ACT RESPECTING FREEDOM OF WORSHIP AND THE MAINTENANCE OF GOOD ORDER

(Assented to 28 January 1954)<sup>1</sup>

Her Majesty, with the advice and consent of the Legislative Council and of the Legislative Assembly of Quebec, enacts as follows:

1. The Freedom of Worship Act (Revised Statutes, 1941, chapter 307) is amended by adding after section 2<sup>2</sup> the following sections:

"2a. It does not constitute the free exercise or enjoyment of religious profession and worship

"a. to distribute, in public places or from door to door, books, magazines, tracts, pamphlets, papers, documents, photographs or other publications containing abusive or insulting attacks against the practice of a religious profession or the religious beliefs of any portion of the population of the Province, or remarks of an abusive or insulting nature respecting the members or adherents of a religious profession; or

"b. to make, in speeches or lectures delivered in public places, or transmitted to the public by means

of loud-speakers or other apparatus, abusive or insulting attacks against the practice of a religious profession or the religious beliefs of any portion of the population of the Province, or remarks of an abusive or insulting nature respecting the members or adherents of a religious profession; or

"c. to broadcast or reproduce such attacks or remarks by means of radio, television or the press.

"2b. Every act mentioned in paragraph a, paragraph b or paragraph c of section 2a is an act endangering the public peace and good order in this Province.

"2c. Every act contemplated in paragraph a, paragraph b or paragraph c of section 2a is prohibited in this Province."

2. The said act is amended by adding, after section 10, the following sections:

"10a. Whosoever commits an act mentioned in paragraph a, paragraph b or paragraph c of section 2a is guilty of an infringement of section 2c and is liable, on proceeding under Part I of the Quebec Summary Convictions Act, to a fine of not less than one hundred dollars nor more than two hundred dollars for the first offence, of not less than two hundred dollars nor more than four hundred dollars for a second offence

<sup>1</sup> *Statutes of Quebec*, 1953-54, c. 15.

<sup>2</sup> Section 2 reads: "The free exercise and enjoyment of religious profession and worship, without discrimination or preference, provided the same be not made an excuse for acts of licentiousness, or a justification of practices inconsistent with the peace and safety of the Province, are by the constitution and laws of this Province allowed to all His Majesty's subjects living within the same."



and of not less than four hundred dollars nor more than one thousand dollars for each subsequent offence, with costs in each case; and, on failure to pay the fine and costs, to imprisonment for not less than fifteen nor more than thirty days for the first offence, for not less than thirty days nor more than sixty days for the second and for not less than one hundred and twenty days nor more than one hundred and eighty days for each subsequent offence.

"When the offence consists in distributing a book or writing mentioned in paragraph a of section 2a, such book or writing may be seized without warrant and all their copies in the Province may be seized with warrant. In case of a conviction, the judge pronouncing it must order the destruction thereof.

"10b. Upon petition supported by the oath of a credible person and alleging an infringement or the impending infringement of the provisions of section 2c, presented by the Attorney-General or with his authorization or by the municipal corporation in whose territory the infringement has been or is about to be committed, the Superior Court or a judge thereof may issue an interlocutory order of injunction to prevent the commission, continuance or repetition of such infringement.

"An interlocutory injunction may be applied for and pronounced against any person and against any organization, association or body of persons, whether a juridical entity or not, who or which infringes or is about to infringe the provisions of section 2c.

"In the case of an organization, association or body of persons not a juridical entity, it shall be sufficient, for the purposes of the petition, the order of injunction and the proceedings relating thereto, to designate it by the collective name by which it designates itself or by which it is commonly known and designated, and the service of the petition, the order of injunction or any other proceeding may validly be made upon it at any of its offices or at any place where it is organized or meets or at any of its places of business in the Province.

"The order of injunction made against such organization, association or body shall bind all persons who are members thereof and shall be executory against each of them.

"The application for an injunction may be made and the injunction granted without the issuance of a writ of summons. Such application shall then itself constitute a suit.

"The recourse contemplated in this section shall also, saving inconsistency with the foregoing provisions, be subject to the application of articles 959 to 972 of the Code of Civil Procedure, except that in no case shall any security be required.

"10c. The exercise of one of the recourses contemplated in sections 10a and 10b shall not prevent the exercise of the other."

3. This act shall come into force on the day of its sanction.

## ONTARIO

### THE FAIR ACCOMMODATION PRACTICES ACT, 1954

#### AN ACT TO PROMOTE FAIR ACCOMMODATION PRACTICES IN ONTARIO

(Assented to 6 April, 1954)<sup>1</sup>

Whereas it is public policy in Ontario that places to which the public is customarily admitted be open to all without regard to race, creed, colour, nationality, ancestry or place of origin; whereas it is desirable to enact a measure to promote observance of this principle; and whereas to do so is in accord with the Universal Declaration of Human Rights as proclaimed by the United Nations;

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

(a) "Minister" means the member of the Executive Council to whom the administration of this Act is assigned by the Lieutenant-Governor in Council;

(b) "officer" means the officer in the public service

who is designated by the Lieutenant-Governor in Council to enforce this Act.

2. No person shall deny to any person or class of persons the accommodation, services or facilities available in any place to which the public is customarily admitted because of the race, creed, colour, nationality, ancestry or place of origin of such person or class of persons.

3. (1) No person shall

(a) publish or display or cause to be published or displayed; or

(b) permit to be published or displayed on lands or premises or in a newspaper, through a radio broadcasting station or by means of any other medium which he owns or controls, any notice, sign, symbol, emblem or other representation indicating discrimination or an intention to discriminate against any person or any

<sup>1</sup> *Statutes of Ontario*, 1954, c. 28.



class of persons for any purpose because of the race or creed of such person or such class of persons.

(2) Nothing in this section shall be deemed to interfere with the free expression of opinions upon any subject by speech or in writing and shall not confer any protection to or benefit upon enemy aliens.

4. (1) The Minister may require the officer to inquire into the complaint of any person that a contravention of this Act has taken place.

(2) Every such complaint shall be in writing on the form prescribed by the Minister and shall be mailed or delivered to him at his office.

(3) When directed so to do, the officer shall forthwith inquire into the complaint and endeavour to effect a settlement of the matter complained of.

(4) The officer shall report the results of his inquiry and endeavours to the Minister.

5. (1) If the officer is unable to effect a settlement of the matter complained of, the Minister may appoint a commission composed of one or more persons and shall forthwith communicate the names of the members to the parties and thereupon it shall be presumed conclusively that the commission was appointed in accordance with this Act, and no order shall be made or process entered or proceeding taken in any court, whether by way of injunction, declaratory judgement, *certiorari*, *mandamus*, prohibition, *quo warranto* or otherwise to question the appointment of the commission, or to review, prohibit or restrain any of its proceedings.

(2) The commission shall have all the powers of a conciliation board under section 26 of *The Labour Relations Act*.

(3) The commission shall give the parties full opportunity to present evidence and to make submissions and if it finds that the complaint is supported by the evidence it shall recommend to the Minister the course that ought to be taken with respect to the complaint.

(4) If the commission is composed of more than one

person, the recommendations of the majority shall be the recommendations of the commission.

(5) After a commission has made its recommendations, the Minister may direct it to clarify or amplify any of its recommendations and they shall not be deemed to have been received by the Minister until they have been so clarified or amplified.

(6) The Minister may issue whatever order he deems necessary to carry the recommendations of the commission into effect and the order shall be final and shall be complied with in accordance with its terms.

6. (1) Every person who fails to comply with any provisions of this Act or with any order made under this Act is guilty of an offence and on summary conviction is liable,

(a) if an individual, to a penalty of not more than \$50; or

(b) if a corporation, to a penalty of not more than \$100.

(2) The penalties recovered for offences against this Act shall be paid to the Treasurer of Ontario and shall form part of the Consolidated Revenue Fund.

7. No prosecution for an offence under this Act shall be instituted except with the consent in writing of the Minister.

8. (1) Where a person has been convicted of a violation of section 3, the Minister may apply by way of originating notice to a judge of the Supreme Court for an order enjoining such person from continuing such violation.

(2) The judge in his discretion may make such order and the order may be enforced in the same manner as any other order or judgement of the Supreme Court.

9. *The Racial Discrimination Act*<sup>1</sup> is repealed.

10. This Act may be cited as *The Fair Accommodation Practices Act, 1954*.

<sup>1</sup> *Statutes of Ontario, 1944, p. 231.*

# CEYLON

## NOTE<sup>1</sup>

### I. LEGISLATION

1. The Shop and Office Employees (Regulation of Employment and Remuneration) Act No. 19 of 1954<sup>2</sup>

The purpose of this Act is to provide for the regulation of employment, hours of work and remuneration for persons in shops and offices and for matters connected therewith or incidental thereto. The Act provides for restriction of hours of employment, weekly holidays, annual holidays and leave and for the grant of holidays on public holidays. Special provisions exist for persons employed during any period which includes midnight. Provision is also made for intervals for meals, lighting and ventilation, sanitary conveniences and washing facilities. The Act also imposes certain obligations on the employer in regard to the minimum rate of remuneration for employees, the time and manner of payment of remuneration and the furnishing of returns in respect of wages, hours of work and such other particulars as the Commissioner of Labour may require him to do from time to time. Special provision is made with regard to the comfort of female shop assistants, such as the provision of seats behind their counters, and employers are required by the provisions of the Act to exhibit a notice in a prescribed form informing female shop assistants that they are entitled to make use of the seats provided.

2. Indian and Pakistani (Parliamentary Representation) Act No. 36 of 1954<sup>3</sup>

The purpose of this Act is to make provision for the election of Members of the House of Representatives to represent persons who are registered as citizens of Ceylon under the Indian and Pakistani Residents (Citizenship) Act No. 3 of 1949.<sup>4</sup> Provision is made by this Act from an appointed date to constitute an electoral district, by the name of the Indian and Pakistani Electoral District, to which four members shall be returned to represent the interests of the Indian and Pakistani residents. Machinery is also provided for the preparation of the necessary register of electors for the Indian and Pakistani Electoral District and for

enabling persons whose names are registered to exercise their vote.

### II. JUDICIAL DECISION

M. P. S. SHAHUL HAMID *v.* COMMISSIONER FOR THE REGISTRATION OF INDIAN AND PAKISTANI RESIDENTS<sup>5</sup>

*Privy Council*

29 November 1954

In this case an application was made by a person under the Indian and Pakistani Residents (Citizenship) Act for the registration of himself and his family as citizens of Ceylon, and the applicant, who had married in India in February 1941, showed that his wife did not join him in Ceylon earlier than June 1942 owing to apprehension of enemy action and by reason of the special difficulties created by the existence of a state of war. It was held that the applicant was entitled to claim the benefit of the provision contained in the last paragraph of Section 6 of the Indian and Pakistani Residents (Citizenship) Act No. 3 of 1949 as amended by Act No. 45 of 1952.<sup>6</sup>

<sup>5</sup> *New Law Reports*, No. 56, p. 152.

<sup>6</sup> Section 6 of the Indian and Pakistani Residents (Citizenship) Act No. 3, 1949 (see footnote 4, p. 46) reads as follows:

"6. It shall be a condition for allowing any application for registration under this Act that the applicant shall have:

"1. first proved that the applicant is an Indian or Pakistani resident and as such entitled by virtue of the provisions of sections 3 and 4 to exercise the privilege of procuring such registration, or that the applicant is the widow or orphaned minor child of an Indian or Pakistani resident and as such entitled by virtue of those provisions to exercise the extended privilege of procuring such registration and

"2. in addition, except in the case of an applicant who is a minor orphan under fourteen years of age, produced sufficient evidence (whether as part of the application or at any subsequent inquiry ordered under this Act) to satisfy the Commissioner that the following requirements are fulfilled in the case of the applicant—namely:

"(i) that the applicant is possessed of an assured income of a reasonable amount, or has some suitable business or employment or other lawful means of livelihood, to support the applicant and the applicant's dependants, if any;

"(ii) where the applicant is a male married person (not being a married person referred to in paragraph (a) of section 3 (2), that his wife has been ordinarily resident in Ceylon, and in addition, that each minor child dependent on him was ordinarily resident in Ceylon while being so dependent;

"(iii) that the applicant is free from any disability or incapacity which may render it difficult or impossible for

<sup>1</sup> Note received through the courtesy of the Permanent Secretary, Ministry of Defence and External Affairs, Colombo.

<sup>2</sup> Text in *Parliament of Ceylon, 2nd Session 1953-54*, Government Press, Colombo.

<sup>3</sup> Text in *Parliament of Ceylon, 3rd Session, 1954-55*, Government Press, Colombo.

<sup>4</sup> A summary of this Act and of the Amendment Act. No. 45, of 1952, is published in *Yearbook on Human Rights for 1952*, p. 27.

the applicant to live in Ceylon according to the laws of Ceylon;

“(iv) that the applicant clearly understands that, in the event of being registered as a citizen of Ceylon:

(a) the applicant will be deemed in law to have renounced all rights to the civil and political status the applicant has had, or would, but for such registration in Ceylon have had, under any law in force in the territory from which the applicant or the applicant's father or ancestor or husband, as the case may be, emigrated, and

(b) in all matters relating to or connected with status, personal rights and duties and property in Ceylon, the applicant will be subject to the laws of Ceylon.”

The amendments made to Section 6 of the Indian and Pakistani Residents (Citizenship) Act No. 3, of 1949, by Act No. 45, of 1952, are as follows:

“Section 6 of the Indian and Pakistani Residents (Citizenship) Act No. 3 of 1949 (hereinafter referred to as the ‘principal Act’) is hereby amended as follows:

“(1) In paragraph (2) of that section, by the substitution for the words “minor orphan under fourteen years of age”, of the following:

“minor orphan under fourteen years of age, or of an applicant who is a student of any university or any government or assisted school, or at any other educational institution approved by the Minister;”

“(2) in paragraph (2) (ii) of that section, by the substitu-

tion for all the words from ‘that his wife’ to “so dependent”, of the following:

“that his wife was uninterruptedly resident in Ceylon from a date not later than the first anniversary of the date of her marriage and until the date of the application, and in addition, that each minor child dependent on the applicant was uninterruptedly resident in Ceylon from a date not later than the first anniversary of the date of the child's birth and until the date of the application;” and

“(3) by the addition at the end of that section of the following new provisions: “Nothing in the preceding paragraph (2) (ii) shall require or be deemed to require that any wife or minor child should have been resident in Ceylon at any time prior to January 1, 1939.

“For the purposes of the preceding paragraph (2) (ii), the continuity of residence of the wife or a minor child of an applicant shall notwithstanding her or his occasional absence from Ceylon be deemed to have been uninterrupted if such absence did not on any one occasion exceed twelve months in duration.

“For the purposes of the preceding paragraph (2) (ii), the continuity of residence of the wife or a minor child of an applicant shall not be deemed to have been interrupted by reason that she or he was not resident in Ceylon during the period commencing on December 1, 1941, and ending on December 31, 1945, or during any part of that period, if the Commissioner is satisfied that she or he did not reside in Ceylon during that period or part thereof owing to apprehension of enemy action in or against Ceylon or owing to special difficulties caused by the existence of a state of war.”

## CHILE

### NOTE

There were no legislative developments or judicial decisions of importance from the point of view of human rights during 1954.<sup>1</sup>

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<sup>1</sup>Information kindly conveyed by Mr. Julio Arriagada Augier, former Under-Secretary of Public Education, Santiago de Chile, government-appointed correspondent of the *Yearbook on Human Rights*.

# CHINA

## THE DEVELOPMENT OF HUMAN RIGHTS IN CHINA<sup>1</sup>

### A SUMMARY OF LEGISLATIVE TEXTS, JUDICIAL INTERPRETATIONS, COURT DECISIONS AND INTERNATIONAL AGREEMENTS

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#### III. INTERNATIONAL AGREEMENTS

#### I. LEGISLATION<sup>2</sup>

##### A. CIVIL AND POLITICAL MATTERS

##### 1. *Rights of Suffrage and Recall*

(a) An amendment to article 4 of the Act governing the election and recall of the President and the Vice-

<sup>1</sup> Note prepared by Mr. James Hsien-wen Tseng, Adviser to the Ministry of Justice, Taipei. Translation by the United Nations Secretariat.

<sup>2</sup> This section is confined almost entirely to legislation promulgated by the President in accordance with law in 1954, irrespective of the date of adoption by the Legislative Yuan.

President was adopted by the Legislative Yuan on 12 March 1954 and promulgated by the President the next day. The provisions of article 4, paragraph 3 (2), of the original Act, promulgated on 31 March 1947, were based upon the assumption that there would be at least three candidates for the office of President (or Vice-President) in a general election. Nothing was said about the procedure to be followed when the number of candidates is less than three. In the light of circumstances, it was found necessary to amend the article in order to avoid any controversy that might arise in the application of the Act.

(b) Article 21 of the regulations made under the Act governing the election and recall of the members of the Control Yuan<sup>3</sup> was deleted and the subsequent articles re-numbered accordingly. The reason for the deletion was that the provisions of article 21 might be construed in such a way as to authorize members of the Control Yuan to institute impeachment proceedings against the presidents of provincial and municipal councils, such action being incompatible with the spirit of democracy and having possibly harmful effects. More particularly, the following considerations motivated the deletion:

(i) According to the provisions of chapter II of the Control Act,<sup>4</sup> the power of impeachment may be used only against the President, the Vice-President and public functionaries guilty of a breach of law or of dereliction of duty.

(ii) In the opinion of the Judicial Yuan, "the provincial and *hsien* councils are representative bodies of the people. The fact that the presidents of the councils, as presiding officers elected by the members from among themselves, take charge of the proceedings does not alter in any way the status of the presidents as representatives of the people. They should not be regarded as public functionaries within the meaning of article 97, paragraph 2, and article 98 of the Consti-

<sup>3</sup> The regulations were promulgated on 31 March 1947 and came into force on the same date. They were twice amended in the same year.

The Constitution of the Republic of China provides for a Control Yuan, separate from the legislature, executive and judiciary and entrusted with powers of consent, impeachment, censure and auditing. [Editor's note]

<sup>4</sup> The Control Act was promulgated on 17 July 1948 and came into force on the same date. Since then several amendments have been made.

tution.”<sup>1</sup> In brief, the presidents of provincial and municipal councils should be regarded as representatives of the people rather than as public functionaries, and therefore are “not liable to impeachment”.<sup>2</sup>

(iii) The presidents of provincial and municipal councils are elected to their office by virtue of their membership in the council. In case of improper conduct, they may be removed by the councils or recalled by the electorate in accordance with the law. If they are charged with criminal offences, the case could be referred to the appropriate judicial organ. It would seem to be contrary to the spirit of democracy to allow the members of the Control Yuan as representatives of the people to impeach another group of the representatives of the people—the presidents of provincial and municipal councils.

(iv) Article 21 included the words “when a member of the Control Yuan has instituted impeachment proceedings against the president of the council of his own electoral district, be it a province or municipality, . . .” This meant that a member of the Control Yuan was under no obligation to refrain from impeaching the president of the council of his own electoral district. However, according to article 2 of the Act governing the election and recall of the members of the Control Yuan, members of the Control Yuan are elected by the provincial and municipal councils. It may well happen that a candidate for membership in the Control Yuan, while electioneering among the members of the council concerned, involves himself in dispute with the president of the council. It is, therefore, undesirable that the candidate, once elected, should have the power to impeach the president of the council.

(v) Article 6 of the Control Act already gives members of the Control Yuan ample power for the impeachment of provincial governors and municipal mayors. In view of this fact, article 21 was the more unnecessary. It would also seem unwise to restrict by specific terms the right of recall on the part of the members of the Control Yuan, as such restriction is apparently inconsistent with the spirit of articles 17 and 23 of the Constitution.<sup>3</sup>

<sup>1</sup> Summary of judicial interpretation SHIH/33 as approved by the Council of Grand Justices and published by order of the Judicial Yuan dated 2 April, 1954.

The constitutional provisions quoted read as follows:

“Art. 97. . . .

“When the Control Yuan deems a public functionary in the Central Government or a local government derelict in the performance of his duty or when it is of the opinion that there has been violation of law, it may propose corrective measures or impeachment. If it involves a criminal offence, the case shall be turned over to a law court.

“Art. 98. Any impeachment by the Control Yuan of a public functionary in the Central Government or a local government shall be instituted upon the proposal of more than one member of the Control Yuan and the endorsement, after due consideration, of more than nine other members.”

<sup>2</sup> Interpretation by the Judicial Yuan, interpretation No. 14.

<sup>3</sup> See *Tearbook on Human Rights for 1947*, p. 80.

(vi) Article 15 of the Act governing the election and recall of the members of the Control Yuan specifically provides that any proposal for the recall of a member of the Control Yuan must be initiated with the signatures of more than one-fourth of the electorate; in other words, it is for the electorate to propose the recall. Yet the second part of the article 21 in question reads: “. . . the councils concerned may not propose the recall of the said member of the Control Yuan”. As this provision implies that members of the councils would otherwise be in a position to propose the recall, it conflicts with article 15 of the Act mentioned above.

(vii) To the argument that the purpose of article 21 was to protect the members of the Control Yuan it is sufficient to point out that the protection is already assured under articles 101 and 102 of the Constitution<sup>4</sup> and under articles 14, 15, 18, 19, 21 and 23 of the Act governing the election and recall of the members of the Control Yuan.

## 2. Right of Petition

The Petition Act, adopted by the Legislative Yuan on 7 December 1954 and promulgated by the President on 18 December of the same year, includes the following points:

(1) Petitions may be submitted on matters concerning (a) national policy, (b) public interests, or (c) the protection of rights.

(2) Petitions must not contravene the Constitution, or interfere with judicial proceedings.

(3) No petition may be made on matters which legally should be brought before a court of law.

(4) Petitions may be submitted by either individuals or bodies corporate.

(5) Recommendations made by local representative bodies are regarded as petitions.

## 3. Equality of the Sexes

Amendments to articles 17 and 18 of the Household Registration Act were adopted by the Legislative Yuan on 7 December 1954 and promulgated by the President on 18 December of the same year. The original articles provided that a wife should take the husband's native place as her native place and a husband who had become an adopted member of the wife's family<sup>5</sup> should take the wife's native place as his native

<sup>4</sup> These articles read as follows:

“Art. 101. No member of the Control Yuan shall be held responsible outside the Yuan for opinions expressed or votes cast in the Yuan.

“Art. 102. No member of the Control Yuan may, except in case of apprehension *flagrante delicto*, be arrested or detained without the permission of the Control Yuan.”

<sup>5</sup> It is customary in Chinese society for a family without male issue to adopt the husband of their daughter as a member of the family. The husband, who is called *chui-fu* in Chinese, comes to live in the family and is regarded as a son (cf. articles 1000 and 1002 of the Chinese Civil Code). [Editor's note]

place. The amendment is designed to allow a wife or a husband who has become an adopted member of the wife's family to retain her or his own native place, unless the person concerned voluntarily accepts the native place of the spouse.

#### 4. Measures concerning Detention and Imprisonment

(a) The Revised Prison Act was adopted by the Legislative Yuan on 14 December 1954 and promulgated by the President on 25 December of the same year.

Chapter I of the Act, dealing with general principles, sets out the purpose of penal institutions in the following terms: "Imprisonment and detention shall be carried out for the purpose of ensuring the moral regeneration and social rehabilitation of prisoners." It clearly indicates that the intention inherent in the enforcement of a sentence of imprisonment is to reform the individual prisoner and to protect society against crime. In accordance with the principles of modern criminology, it rejects any negative, vindictive and inhuman attitude towards prisoners and emphasizes instead a constructive, benevolent, correctional and educational approach in the treatment of prisoners. Chapter I also provides that young prisoners shall as a rule be kept separate from adults, and that men and women shall likewise be detained in separate institutions. If owing to circumstances it is necessary to confine prisoners of different categories in a single institution, separate quarters must be provided for women and for young prisoners. Chapter I further provides for the inspection and supervision of prison conditions by supervisory organs and sets forth the procedure whereby prisoners may lodge complaints against measures taken by the prison authorities.

Chapter II lays down the rules to be observed in receiving prisoners, as well as the conditions under which the prison authorities may refuse to admit a prisoner and the measures that should be taken in respect of such a prisoner. It stresses the importance of gathering information about each prisoner, especially young prisoners, as a basis for the application of suitable correctional measures.

Under chapter III, prisoners may be placed in individual confinement or confined with other prisoners. Individual confinement takes the form, with certain modifications, of confinement alone in an individual cell. For the first nine months in prison (three months in the case of young prisoners) prisoners must be kept in individual confinement. If a prisoner is sentenced to a shorter term, he is subject to individual confinement for the whole term. The system of confinement in groups has been improved in many aspects. If the prison is overcrowded, prisoners may be confined in dormitories according to their classification. Chapter III further lays down regulations for individual confinement and confinement in groups. It also lays down the system of privileges enjoyed by the various classes of prisoners.

Chapter IV deals with security measures in prisons and the use of instruments of restraint. It specifies the precautionary measures to be taken in the event of natural disaster or emergency.

Chapter V lays down the rules governing prison work, with special emphasis on the training of prisoners to earn a living after release. It prescribes the daily hours of work and provides for appropriate vocational training courses. In the matter of remuneration, the term "wage" is substituted for the term "grant", as used in the original Act, out of consideration for the personal dignity of prisoners. The same chapter also provides for payment of compensation and wages to prisoners injured or killed in industrial accidents.

Chapter VI deals with the guiding principles and methods of education in prisons and with the hours of instruction. Chapter VII stipulates, *inter alia*, that "every prisoner shall be provided with food and drinking water adequate for his health and be supplied with clothing, bedding and other necessary articles". Chapter VIII deals with measures relating to the personal health of prisoners and the medical care of sick prisoners.

Chapter IX lays down certain restrictions on the prisoner's contact with the outside world, including restrictions on receiving visits from members of his family and on correspondence. Chapter X provides for the safe keeping of personal property brought in by the prisoner or sent to him from outside, as well as the disposal of property belonging to deceased prisoners.

Chapter XI contains provisions concerning the system of rewards and punishments applicable to prisoners. Chapter XII lays down the conditions on which parole may be granted and the procedure to be followed. Chapter XIII contains provisions concerning the procedure for the release of prisoners and the measures to be taken for the after-care of discharged prisoners.

Chapter XIV deals with the measures to be taken upon the death of a prisoner.

Chapter XV contains provisions concerning the methods of executing death sentences and the procedure to be followed.

Chapter XVI deals with arrangements for the performance of work by prisoners outside penal institutions.

(b) The Revised Detention Act, adopted by the Legislative Yuan on 14 December 1954 and promulgated by the President on 25 December of the same year, includes the following amendments of the original Act:

(i) Persons sentenced to life imprisonment must, like persons sentenced to death, be segregated from other persons in custody.

(ii) The original Act provided that any information found in the correspondence of an untried prisoner

that might help the conduct of prosecution or trial should be reported to the competent procurator or court. The revised Act supplements this provision by stipulating that any information concerning the conversations and conduct of an untried prisoner that may serve the same purpose shall likewise be reported.

(iii) The original Act required that the competent court or procurator and the family of the accused should be informed if an accused person died while in a place of detention. Under the terms of the relevant article, however, while the procurator had to be notified in the event of the death of an accused person undergoing investigation, the court had to be notified in the case of an accused person under trial. This appears to disregard the necessity for the procurator to investigate the death of any accused person. The revised Act seeks to rectify this situation by providing that in the event of death of an accused person in a place of detention, the procurator must be notified, whether the accused was undergoing investigation or trial, so that an investigation may be made.

#### 5. *Due Process of Law*

(a) The regulations governing proceedings in special criminal cases were repealed by presidential order on 1 January 1954, following the approval of the Legislative Yuan on 10 November of the previous year, and regulations for the disposition of pending special criminal cases were adopted by the Legislative Yuan on 29 December 1953 and promulgated by the President on 1 January of the following year, the latter regulations being designed to dispose of special criminal cases still pending before the courts.

The Chinese judicial system allows three trials in courts at three levels for ordinary criminal offences, and one trial and one review for special criminal offences. As the penalties prescribed for special criminal offences are usually heavier than those for ordinary criminal offences, it was seen to be unjust to apply summary procedures in the case of special criminal offences. This system was therefore abolished to give further protection to human rights. The regulations for the disposition of pending special criminal cases were enacted as a temporary measure with a view to the conclusion of special criminal cases still pending before the courts. The main provisions of the regulations are as follows:

(i) With the repeal of the regulations governing proceedings in respect of special criminal offences, all such offences still under investigation or under trial shall be dealt with in accordance with the present regulations.

(ii) With the repeal of the regulations governing proceedings in respect of special criminal offences, the procedures for the investigation and trial of such offences, including the procedures for the entry of objections against rulings of the court, retrial and special appeal, shall henceforth be governed by the Code of Criminal Procedure. Special criminal cases

under review by high courts or branches thereof shall be deemed to be proceedings before a court of second instance. Cases under review by the Supreme Court shall likewise be deemed to be proceedings before a court of third instance.

(iii) Applications for review shall be regarded as appeals.

(iv) Where application for review is made by the procurator and involves only some of the co-defendants, the review shall have no effect on the other co-defendants. If, however, the application is made by some of the co-defendants, the effect of the review shall extend to the other co-defendants with the exception of any acquitted by the court of original jurisdiction. If a defendant appeals, he shall not be liable to a heavier penalty than that imposed in the original sentence.

(v) The waiver or withdrawal of an application for review shall be regarded as the waiver or withdrawal of an appeal.

(vi) Civil proceedings in connexion with special criminal offences may be instituted in accordance with the Code of Criminal Procedure.

(vii) The provisions of the Code of Criminal Procedure shall apply to matters not covered by the present regulations.

(b) Changes in the division of criminal jurisdiction between the civil and military courts.

Article 9 of the Chinese Constitution<sup>1</sup> provides that no person, other than a person on active military service, shall be subject to trial by a military court. As a result of the conflict on the Chinese mainland, the province of Taiwan has, however, long been placed under martial law. In the interest of maintaining social order and national security, the Chinese Government has authorized the competent military authorities to assume jurisdiction, in accordance with article 8 of the Military Justice Act, over certain serious offences against public security normally within the jurisdiction of civil courts.

As the local situation in Taiwan has become to a great extent stabilized in recent years, the jurisdiction of military courts over criminal offences has been amended on three occasions, being further restricted each time. It is appropriate, in this connexion, to make a brief review of the changes in the jurisdiction of military courts in order to show that, although confronted with a national emergency, China has been doing its utmost to protect human rights and to enforce the rule of law in conformity with the purposes of the United Nations.

(1) The first stage. On 20 October 1951, the Executive Yuan promulgated temporary regulations concerning the division of jurisdiction between military and civil courts in the Province of Taiwan placed under martial law. According to these measures, the juris-

<sup>1</sup> See *Yearbook on Human Rights for 1947*, p. 79.



diction of military courts under article 8 of the Military Justice Act was confined to serious military offences and offences against local peace and order. Other cases were to be referred to civil courts. As these regulations merely laid down general rules, it was often very difficult to implement them.

(2) The second stage. On 10 May 1952, the Executive Yuan further adopted regulations concerning the allocation of criminal cases to the military and civil courts in the Province of Taiwan placed under martial law. The new regulations came into force on 1 June of the same year, upon the approval of the President. They provide that, in addition to offences committed by military personnel, the military courts shall have jurisdiction over cases involving espionage for the Communists, rebellion, smuggling committed jointly by military personnel and civilians (these offences being subject to penalties prescribed in special criminal legislation) and banditry. The military courts were further authorized to deal with offences against public safety and order as provided in the Criminal Code which constitute grave threats to local peace and security. The scope of the latter offences has been clearly defined in various decrees. In addition, the military courts were given jurisdiction in respect of the offence of setting a forest on fire as defined in article 51, paragraphs 1 and 2 of the Forestry Act and serious offences relating to opium. Criminal cases other than those mentioned above came under the jurisdiction of the civil courts.

(3) The third stage. On 14 October 1954, the Executive Yuan, with the approval of the President, put into effect a revision of the provisions of the regulations referred to in paragraph (2) above. Under the revised provisions, the jurisdiction of the military courts is strictly limited to (i) offences committed by military personnel, and (ii) offences involving espionage for the Communists and rebellion (punishable under the regulations for the elimination of Communist spies during the period of suppressing rebellion and the regulations for the suppression of rebellion). All other cases are to be referred to civil courts. The revised regulations also reaffirm the guarantee of the freedom of person under article 8, paragraphs 2, 3 and 4 of the Constitution<sup>1</sup> and under the Habeas Corpus Act,<sup>2</sup> and enjoin government bodies at all levels to respect human rights by ensuring such freedom and refraining from any unlawful arrest or detention.

#### 6. Extradition

The Extradition Act was adopted by the Legislative Yuan on 2 April 1954 and promulgated by the President on 17 April of the same year. The Act applies only when there is no extradition treaty in force between the State requesting extradition and the Republic of China, or when extradition is requested by

more than one State and the extradition treaties concluded by them with the Republic of China conflict with one another. For extradition to be granted, the person must be claimed for an act committed outside Chinese territory which constitutes a crime (other than minor offences) under the laws both of the Republic of China and of the requesting State, but, if extradition is sought for an act constituting a military, political or religious offence or if the person claimed is a national of the Republic of China, the request for extradition may not be granted.

In order to avoid double jeopardy, extradition is not permitted if the case has been tried by a Chinese court, or the case is already closed. No further request for extradition shall be entertained if: (i) a previous request was denied; or (ii) the requesting State failed to take prompt action after the extradition request was granted.

Legal issues involved in a request for extradition are to be decided by judicial organs, and a recommendation regarding the advisability of granting such a request is to be made by the executive branch of the Government. The authority for final approval rests exclusively with the President.

#### B. ECONOMIC, SOCIAL AND CULTURAL MATTERS

##### 1. *Right of Property: Land Reform*

(a) Regulations concerning the equalization of land-ownership in urban areas were adopted by the Legislative Yuan on 15 August 1954 and promulgated by the President on 26 August of the same year. The main features are as follows:

(i) This legislation is national in character, and the regions to which the regulations are to apply are to be designated by special decree. The urban land to which these regulations apply is to be the entire area covered by the town planning project.

(ii) Assessment of land value provides the basis upon which land value tax may be levied and land expropriated. According to these regulations, land value shall be, as a rule, declared by land-holders, and if necessary, fixed by public appraisal. Such provisions are not only in conformity with the principle of "declaration of land value by landholders" advocated by Dr. Sun Yat-sen, founder of the Chinese Republic, but also prevent landholders from "purposely declaring excessively low values" or "failing to declare land value".

(iii) Land value tax constitutes the main feature of urban land taxation provided for in these regulations. Under these regulations, the average value of five *ares* of urban land selected in different *hsiens* (or municipalities) is taken as the standard value, above which a progressive rate of land value tax applies. The progressive rate ranges from 1.5 per cent to 6.5 per cent, and the larger the area, the higher the land value and the heavier the tax; the object of applying such a

<sup>1</sup> See *Yearbook on Human Rights for 1946*, p. 66, and *Yearbook on Human Rights for 1947*, p. 79.

<sup>2</sup> Promulgated in June 1935, and later amended.

tax rate is to avoid monopolistic practices with regard to land holdings and to promote the proper use of land. In the case of land in immediate use by factories, a uniform tax rate equivalent to 1.5 per cent of the officially fixed land value applies, provided the land is within the industrial zone provided in the town planning project.

(iv) The doctrine that "increment of land value belongs to the community" is the most important part in Dr. Sun's teaching on the equalization of landownership. The regulations devote a special chapter to this subject, the main provisions being as follows:

a. Once the land value is declared by the land-holders themselves, any increment of land value due to causes other than the owners' efforts is to be collected as public revenue.

b. The provisions regarding methods of computing land value increment and the conditions under which such increment belongs to the community apply only when title is transferred through the sale or gift of the land, transfer due to an act of succession being excluded. The system of collecting land value increment through periodical assessment has been abolished.

c. If the total increment of land value is less than 400 per cent of the value originally declared, the amount to be collected as public revenue shall be from 30 per cent to 90 per cent of the increment, depending on the exact increase in land value; when the total increment is over 400 per cent, the entire amount in excess of that percentage is collected as public revenue.

d. In order to prevent tax evasion by the deliberate declaration of unduly low land values, it is provided that land may be bought by the Government at its declared value. In addition, the obligation to declare is clearly emphasized.

e. It is specified that the increment collected as public revenue must be used for the benefit of the whole community.

(v) With regard to land utilization, the main purposes are:

a. To safeguard the legitimate interests of land-holders whose land is expropriated by the Government; it is provided that compensation shall be paid for land appropriated at the current price, the exact amount to be decided by the Urban Land Appraisal Committee.

b. To promote the proper use of urban land and prevent land-holders from using urban land in such a way as to obstruct the progress of city reconstruction, privately owned land within the area covered by the town planning scheme, and on which no construction work has been undertaken, is limited to not more than ten *ares* per owner (agricultural land not included). The amount of land for industrial use is limited to the amount actually required.

c. If his holding exceeds the prescribed maximum

acreage, the land-owner is required to sell the excess area within a period of two years from the date of entry into force of the regulations. After the expiration of this time-limit, the competent local authorities may expropriate the excess area and make it available, after consolidation, to those in need of land for construction purposes.

d. If so required for purposes of urban development and reconstruction, the government authorities may expropriate, regulate, delimit and classify lands in selected areas on a section by section basis, and make them available for approved private acquisition.

e. Public land which has been leased for construction purposes and on which construction work has not been undertaken shall be regulated and the land so leased may be limited to a certain acreage. Land in excess of that maximum shall be taken back by the competent local authorities to be made available for further leasing or private acquisition. If the lessee of public land fails to start building work within a year from the date of leasing or acquisition or to submit a request for the extension of that time-limit, the competent local authorities may take back the land in question by paying the original price or terminate the lease.

f. Positive measures are provided to remedy the housing shortage.

## 2. *Right of Property: Foreign Investment*

Regulations concerning foreign investment were passed by the Legislative Yuan on 6 July 1954 and promulgated by the President on 14 July of the same year. They include the following features:

(a) Foreign investments are to be treated on an equal footing with Chinese investments.

(b) Foreign investments are protected against government expropriation or purchase. Foreign investors have an assurance that their undertakings will not be subject to government expropriation or purchase within ten years of their establishment. In the event of expropriation or purchase by the Government, a reasonable price will be paid at an agreed time.

(c) Ordinary financial and commercial investments are not covered by these regulations.

(d) The transfer of invested capital is permissible.

(e) Transfers of profits from investments may not exceed 15 per cent of the total invested. If the investment takes the form of the contribution of technical knowledge, its monetary value will be decided by the Ministry of Economic Affairs at the time when the whole project is considered.

(f) The regulations for the time being apply only to Taiwan Province.

## 3. *Public Health: Control of Narcotic Drugs*

Regulations concerning the control of narcotic drugs were adopted by the Legislative Yuan on 5 October 1954 and promulgated by the President on 18 October

of the same year. The purpose of the regulations is to control the importation, manufacture, sale and purchase of narcotic drugs, and to provide for inspection. The regulations also define the term "narcotic drugs", specify types of drug and lay down certain standards concerning their quality and content.

#### 4. Chinese Red Cross Society

The Chinese Red Cross Society Act was adopted by the Legislative Yuan on 5 October 1954 and promulgated by the President on 18 October of the same year, the regulations concerning the administration of the Chinese Red Cross Society being repealed. The new Act deals with the legal status of the Chinese Red Cross Society and is designed to safeguard the development of humane and philanthropic services. It is provided that the Society shall base its activities on the International Red Cross Convention signed by the Chinese Government and also on principles adopted by the Conferences of the International Red Cross Society. The Society is to assist the Government in rendering the following services:

- (a) The provision of aid to wounded soldiers and the provision of relief to prisoners of war and civilians in time of war;
- (b) The provision of aid and relief in the event of internal and external calamities;
- (c) The provision of services in connexion with the prevention of diseases, the improvement of health and precautions against disasters;
- (d) The provision of other services consistent with the purpose of the Red Cross Society.

## II. JUDICIAL INTERPRETATIONS AND COURT DECISIONS

### A. INTERPRETATIONS BY THE JUDICIAL YUAN<sup>1</sup>

#### 1. Right to Liberty

In exercising its legislative functions and powers, the *hsien*<sup>2</sup> council may not restrict the people's right to liberty, unless such restriction is warranted by the Constitution or some other law. (Summary of judicial interpretation SHIH/38 as approved by the Council of Grand Justices and published by order of the Judicial Yuan dated 27 August 1954.)

#### 2. Public Office

##### (a) Meaning of public office

The representatives of the people at all levels, public servants of central and local governmental bodies and any other persons engaging in public

<sup>1</sup> Under the Constitution of China, the Judicial Yuan is vested with the power to interpret the Constitution and to unify the interpretation of laws and decrees. The interpretations made by the Judicial Yuan are deemed to be authoritative, binding upon the whole nation, and therefore more important than the decisions of the courts of final instance.

<sup>2</sup> *Hsien* is a major administrative unit in China. [Editor's note]

functions in accordance with law are considered to be holders of public office within the meaning of article 18 of the Constitution.<sup>3</sup> (Summary of judicial interpretation SHIH/42 as approved by the Council of Grand Justices and published by order of the Judicial Yuan dated 17 November 1954.)

##### (b) Restrictions on holding more than one public office

No member of the Legislative Yuan may concurrently hold the post of delegate to the National Assembly. (Summary of judicial interpretation SHIH/30 as approved by the Council of Grand Justices and published by order of the Judicial Yuan dated 15 January 1954.)

#### 3. Right to Property

No compulsory execution may be effected against the property of a citizen, unless one of the grounds for execution listed in article 4 of the Law governing Compulsory Execution exists. (Summary of judicial interpretation SHIH/35 as approved by the Council of Grand Justices and published by order of the Judicial Yuan dated 14 June 1954.) The Law governing Compulsory Execution was promulgated and entered into force on 19 January 1950.

#### 4. Right to Marry

(a) The customary form of "adoption" of a child prevalent among the local population does not constitute adoption within the meaning of the Civil Code. If, after so-called adoption as a daughter or a son, the "adopted" daughter or son wishes to marry the legitimate son or daughter of the foster parents, the marriage must be preceded by the termination of the relationship between the adopter and the adopted. (Summary of judicial interpretation SHIH/32 as approved by the Council of Grand Justices and published by order of the Judicial Yuan dated 26 March 1954.)

(b) An adopted daughter of the mother may not marry the latter's adopted son. (Summary of judicial interpretation SHIH/34 as approved by the Council of Grand Justices and published by order of the Judicial Yuan dated 28 April 1954.)

### B. DECISIONS OF THE SUPREME COURT<sup>4</sup>

#### 1. Decisions in Criminal Cases

##### (a) Freedom and safety of person

(i) Freedom and safety of the person must not be restricted. A person may not subject any other person

<sup>3</sup> Art. 18 provides: "All persons shall have the right to take part in public examinations and to hold public office." (*Tearbook on Human Rights for 1947*, p. 80)

<sup>4</sup> Under the judicial system existing in China, judicial decisions are guided exclusively by statute law. Legally, court judgements can hardly be said to have any general binding force. Nevertheless, decisions of the Supreme Court are often observed by judges of lower courts and in that sense carry considerable weight.

In the opinion of the Supreme Court, the term "judicial precedents" has a specific meaning. It denotes decisions of

to illegal physical control, thus depriving him of the freedom a normal human being should enjoy; likewise he may not cause another to become a slave or to live under conditions of restricted freedom similar to slavery. (Summary of Supreme Court decision (criminal matters) TAI/SHANG/156 of 1954.)

(ii) No person may be deprived of his freedom of movement by unlawful means. (Summary of Supreme Court decision (criminal matters) TAI/SHANG/183 of 1954.)

(iii) It is unlawful for any person to intimidate any other person by words or by deeds. (Summary of Supreme Court decision (criminal matters) TAI/SHANG/125 of 1954.)

(iv) If, in the discharge of his official functions, a public functionary exceeds his lawful authority and abridges the freedom and safety of the person of, or causes the death of, any person, he shall be held liable under the law. (Summary of Supreme Court decision (criminal matters) TAI/SHANG/411 of 1954.)

#### (b) *Protection of property*

(i) A person's property must not be encroached upon; the law accordingly specifically provides that any person who encroaches upon another's property by such unlawful means as larceny, theft, robbery and intimidation shall be liable to punishment. (Summary of Supreme Court decision (criminal matters) TAI/SHANG/136 of 1954.)

(ii) The law provides that the appropriation of any person's property by such means as fraud, embezzlement, breach of faith, etc., is unlawful. (Summary of Supreme Court decision (criminal matters) TAI/SHANG/791 of 1954.)

#### (c) *Fair trial and protection by law*

(i) The people have the right to institute legal proceedings. The court shall, in accordance with law, conduct trials in an impartial manner. Attention must be paid to matters both favourable and unfavourable to the defendant. (Summary of Supreme Court decision (criminal matters) TAI/SHANG/785 of 1954.)

(ii) It is unlawful to pass sentence without specifying the evidence on which the conviction is based. (Summary of Supreme Court decision TAI/SHANG/658 of 1954.)

the Supreme Court which may set a pattern for later cases and which, in their abstracted form, are approved by the joint session of the civil and criminal divisions of the Supreme Court and duly reported to the Judicial Yuan. The compilation of judicial precedents is undertaken by the editing section of the Supreme Court. As the judicial precedents established in 1954 have not yet been published, references to such precedents in this note are based solely upon personal research, using as source materials the official texts of the decisions and rulings on civil and criminal cases given by the Supreme Court in that year. They should not be confused with the judicial precedents recognized as such by the Supreme Court.

(iii) The rights and duties of the people are expressly laid down in the Constitution. Consequently, any act punishable in accordance with the provisions of the applicable substantive law is an offence and the offender should be tried in accordance with the provisions of the applicable procedural law. Thus, no trial may be conducted contrary to the provisions of either the applicable substantive law or the applicable procedural law; still less may any penalty be imposed. (Summary of Supreme Court decisions (criminal matters) TAI/SHANG/796, 863, and others, all of 1954.)

### 2. *Decisions in Civil Matters*

#### (a) *Rights in marriage*

Unless there is good cause why husband and wife cannot live together, one spouse may not refuse to cohabit with the other spouse, if the other spouse so requests. (Summary of Supreme Court decision (civil matters) TAI/SHANG/896 of 1954.)

#### (b) *Children born out of wedlock*

(i) The guardianship of a minor child born out of wedlock shall in principle be assumed by the natural father, but may be assumed by the natural mother if such a course is considered to be in the interest of the child. (Summary of Supreme Court decision (civil matters) TAI/SHANG/323 of 1954.)

(ii) The mother of a child born out of wedlock may claim his acknowledgement by his natural father. (Summary of Supreme Court decision (civil matters) TAI/SHANG/338 of 1954.)

#### (c) *Adoption*

Where the foster-parent has ill-treated the adopted child, or vice versa, the aggrieved party may apply to the court for the termination of the adoption. (Summary of Supreme Court decision (civil matters) TAI/SHANG/1163 of 1954.)

#### (d) *Safeguarding of personal reputation*

A person whose reputation is injured has the right to claim damages and action to restore his reputation from the person causing such injury. (Summary of Supreme Court decision (civil matters) TAI/SHANG/414 of 1954.)

#### (e) *Right to property*

(i) The owner of a thing has the right to demand its return by any person holding it without authority. (Summary of Supreme Court decision (civil matters) TAI/SHANG/103 of 1954.)

(ii) The possessor of a thing has the right to demand that it shall be returned by any person seizing it. (Summary of Supreme Court decision (civil matters) TAI/SHANG/151 of 1954.)

(iii) A person who has for twenty years continuously enjoyed the peaceful possession of another person's unregistered immovable property with the intention of acquiring ownership may acquire the ownership of

the property. (Summary of Supreme Court decision (civil matters) TAI/SHANG/351 of 1954.)

(iv) After the entry into effect of the regulations concerning the implementation of the land-to-the-tiller policy,<sup>1</sup> a recipient of farm land expropriated for re-distribution has the right to demand any person cultivating it without authority to return it to its rightful owner. (Summary of Supreme Court decision (civil matters) TAI/SHANG/794 of 1954.)

(f) *Protection of the human person*

(i) If a person unlawfully causes bodily injury to another person, the latter may claim medical expenses and compensation from the person causing the injury. (Summary of Supreme Court decision (civil matters) TAI/SHANG/500 of 1954.)

<sup>1</sup> The Land-to-the-Tiller Act was promulgated on 26 January 1953 and was applied in Taiwan. Compare article 143 of the Constitution, in *Yearbook on Human Rights for 1947*, pp. 80-1.

(ii) If a watch-dog causes bodily injury to a person, the injured person may claim compensation from the owner for the injuries thus sustained. (Summary of Supreme Court decision (civil matters) TAI/SHANG/364 of 1954.)

### III. INTERNATIONAL AGREEMENTS

The protocol adopted by the United Nations Opium Conference (Protocol of 23 June 1953 for Limiting and Regulating the Cultivation of the Poppy Plant, the Production of, International and Wholesale Trade in and Use of Opium) was signed by the Republic of China on 18 September 1953 and was approved by the Legislative Yuan on 6 April 1954. By a decree dated 19 April of the same year, the President issued an instrument of ratification, and on 25 May of the same year the said instrument was deposited with the Secretariat of the United Nations.

## COLOMBIA

### LEGISLATIVE ACT No. 3, OF 25 AUGUST 1954, AMENDING THE NATIONAL CONSTITUTION AND EXTENDING THE ACTIVE AND PASSIVE RIGHT OF SUFFRAGE TO WOMEN<sup>1</sup>

*Art. 1.* Article 14 of the National Constitution shall read as follows: "A Colombian acquires citizenship upon completing his twenty-first year. If a person ceases to be a national he shall *de facto* cease to be a citizen. In addition, in the cases specified by legislative provisions, citizenship may be withdrawn or suspended by virtue of a judicial decision.

"If a person has lost citizenship he may apply for reinstatement."

<sup>1</sup> Text published by the National Printing House at Bogotá in *Asamblea Nacional Constituyente: Disposiciones constitucionales y legales 1952-1955*, and received through the courtesy of the Permanent Mission of Colombia to the United Nations. Translation from the Spanish text by the United Nations Secretariat.

*Art. 2.* Article 15 of the National Constitution shall read as follows:

"No person may vote or be elected or hold any public office involving the exercise of authority or jurisdiction unless his status is that of a citizen in full exercise of his rights."

*Art. 3.* The provision of article 171 of the National Constitution restricting suffrage to male citizens shall be no longer valid.<sup>2</sup>

*Art. 4.* The present Legislative Act shall enter into force upon ratification.

<sup>2</sup> Article 171 of the Constitution of Colombia of 5 August 1885 reads as follows:

"*Art. 171.* All male citizens shall directly elect councillors, deputies to the departmental assemblies, representatives, senators and the President of the Republic."

### LEGISLATIVE ACT No. 6, OF 6 SEPTEMBER 1954, AMENDING THE NATIONAL CONSTITUTION AND PROHIBITING INTERNATIONAL COMMUNISM<sup>1</sup>

*Art. 1.* The political activity of international communism is prohibited. The law shall determine how the ban shall be made effective.

*Art. 2.* This Act shall enter into force upon ratification.

<sup>1</sup> Text published by the National Printing House at Bogotá in *Asamblea Nacional Constituyente: Disposiciones constitucionales y legales 1952-1955*, and received through the courtesy of the Permanent Mission of Colombia to the United Nations. Translation from the Spanish text by the United Nations Secretariat.

### DECREE No. 3000, OF 13 OCTOBER 1954, CONCERNING THE OFFENCES OF DEFAMATION AND INSULT<sup>1</sup>

*Art. 1 (Insult).* Any person who, by any means capable of communicating thought, attacks the honour, reputation or dignity of another person, or reveals the purely private or domestic faults or vices of another person, shall be liable to a fine of not less than two hundred (200) nor more than two thousand (2,000) pesos.

The same penalty shall be imposed on any person who maliciously alludes to or makes public an illicit

act committed by another person's spouse or relation by blood up to the fourth civil degree of relationship, or by marriage up to the second degree.

*Art. 2 (Defamation).* Any person who, by any means capable of communicating thought, falsely imputes to another person a specific personal act which is defined by law as an offence or which by its dishonourable or immoral character is likely to bring such other person into public disgrace or contempt shall be liable to a fine of not less than five hundred (500) nor more than five thousand (5,000) pesos.

*Art. 3.* If the means of communication used is a

<sup>1</sup> Spanish text in *Diario Oficial* No. 28607, of 21 October 1954. Translation by the United Nations Secretariat.

publication, radio broadcast, film or television transmission, or a speech before a public meeting or assembly, the fine shall be not less than one thousand (1,000) nor more than ten thousand (10,000) pesos for the offence of insult, and not less than two thousand (2,000) nor more than twenty thousand (20,000) pesos for the offence of defamation.

The penalties shall vary according to the seriousness of the offence, the extent of dissemination and the economic resources of the offender.

*Art. 4.* The penalties specified in the foregoing articles shall be increased by one-third to one-half if the offence is directed against:

- (a) A political, administrative, judicial, military or ecclesiastical body, or a representative thereof; or
- (b) In general, any public official or employee in command or authority; or
- (c) A member of the armed forces; or
- (d) A person invested with special ecclesiastical dignity.

*Art. 5.* If in the utterance use is made of such indirect expressions as "it is said", "rumour has it", "it is asserted", "we are informed", "in authorized circles" or the like, the offence shall be deemed to be a patent insult or defamation if the said expressions lend themselves to easy identification of the injured party by the hearer or reader.

*Art. 6.* Any person who publishes, repeats or reproduces by any means whatsoever an insult or defamation tendered by another person shall be liable to the same penalties as the author of the insult or defamation concerned.

*Art. 7.* If the insult or defamation is uttered in a publication or in a radio broadcast, both the person presumed or ascertained to be the author, and the director of the information enterprise shall be liable for the offence, and the injured party may institute proceedings against either of them.

The director shall not be criminally liable if he demonstrates to the satisfaction of the court that:

- (a) In the performance of his duties as director, he has exercised the care and diligence necessary to prevent the publication of insulting or defamatory matter;
- (b) The information enterprise under his direction has clearly and expressly stated on the front page of two successive editions, in the case of a publication, or near the beginning of two successive programmes, in the case of a radio broadcast, that the insulting or defamatory matter was not authorized or endorsed by the said medium;

(c) The news or radio editor who authorized the insulting or defamatory matter is a permanent member of the staff.

The director shall give the name of the news or radio editor concerned, who shall be considered liable

instead of the director, for the purposes specified in the first paragraph of this article.

*Art. 8.* Notwithstanding the provisions of the foregoing article, both the director of the information enterprise and the owner thereof shall be held liable for any civil damages sustained by the injured party as a result of the offence of insult or defamation.

At the request of the plaintiff, his application to institute a civil suit in connexion with the criminal proceedings shall be notified to the said director and owner, and they shall thereupon be deemed for all legal purposes to be a party to the proceedings.

If the information enterprise is owned by a body corporate, the notification shall be made to the managing director or legal representative of the said agency.

*Art. 9.* Insult or defamation shall not be excluded by the fact that the object thereof is a body corporate or a public body or agency.

*Art. 10.* Insulting or defamatory matter contained in the written briefs or oral pleadings of the parties, or of the legal representatives or counsel of parties to judicial proceedings before a judicial authority shall be liable only to disciplinary measures imposed by such authority if the said matter has not been disseminated and is relevant to the proceedings.

*Art. 11.* Subject to the provisions of the second paragraph of article 1, offensive statements concerning dead persons in purely historical writings shall not constitute the offence of insult.

*Art. 12.* The following likewise shall not constitute insult or defamation:

- (a) Confidential information or reports given by citizens to public officials in order to apprise them of misdeeds or offences of other public employees;
- (b) Information or reports as aforesaid which relate to private persons, if the misdeeds or offences relate to the public administration;
- (c) Investigative activity, irrespective of the outcome, conducted by public officials on the basis of information or reports as aforesaid;
- (d) Confidential reports which are customary in commercial practice, such as business or credit ratings of specific individuals or bodies corporate, or which are designed to prevent the commission of offences against credit institutions;
- (e) Private communications between business men the purpose of which is to correct the misuse of bills of exchange or other negotiable instruments, or, generally, to raise the ethical standards of business customs and practices.

*Art. 13.* If the insulting or defamatory matter is addressed in written or pictorial form, exclusively to the injured party, or is uttered in the course of a personal conversation in the absence of any third party or by means of a telegram or a telephone message, the prescribed penalties shall be reduced by one-half.



*Art. 14.* Insult or defamation proceedings shall be instituted on the application of the injured party or his legal representative.

If the injured party dies before the application is filed, or if the utterance concerns the memory of a deceased person, the application may be made or pursued on behalf of the deceased by his spouse or by a lineal relative or a brother or sister.

If the utterance concerns a public administrative agency or a private body corporate, the application may be made by the director or head of the office concerned, the state Counsel-General, the managing director or the administrator, as the case may be.

*Art. 15.* A person charged with uttering an insult or defamation shall not be liable if he proves that the allegations he has made are true.

However, in defamation or insult proceedings evidence shall not be admissible concerning:

- (1) An allegation of any punishable act in respect of which the injured party has been definitively acquitted or been granted a permanent stay of proceedings in Colombia or any other country;
- (2) The existence of facts relating to conjugal or family life, to an offence against good morals the investigation of which can be undertaken only if requested, or to an offence against sexual freedom and honour, or, in general, whenever the allegation alludes to circumstances of private life.

In all other cases, if the accused fails to demonstrate in the proceedings that his allegation is true, it shall be deemed false.

*Art. 16.* If the injured party, in the exercise of his rights under article 19 of Act No. 29 of 1944, requests, in addition, that a correction supplied by him be published on the front page of two successive editions of the periodical and such correction is duly published, the action instituting defamation or insult proceedings

shall be deemed to have lapsed on condition that the correction is on both occasions preceded by a statement from the director of the publication that he is in full accord with the correction as submitted.

In the case of a radio broadcast, the request of the injured party shall apply to the first part of the radio programme.

*Art. 17.* If, before judgement is given by a court of first instance, the person charged with insult or defamation offers to the court a retraction drafted in terms expressly accepted by the injured party, no penalty shall be imposed and the proceedings shall be terminated.

If the insult or defamation was uttered in a publication or radio broadcast, the retraction shall not be valid unless it is brought to the notice of the public in the manner and on the number of occasions specified in the foregoing article.

If the plaintiff does not accept the retraction, even though it is drafted in satisfactory form, the court shall decide forthwith whether the retraction suffices as full reparation for the injury suffered, and, in the affirmative, the legal consequences specified in the first paragraph of this article shall take effect subject to prior compliance with the provisions of the second paragraph requiring that the retraction be brought to the notice of the public.

...

*Art. 31.* Any person who, by any means capable of communicating thought, does injury to another person shall, apart from his criminal liability, be required to pay damages.

An action to recover damages may, under the general rules of the Code of Criminal Procedure, be made a part of criminal proceedings, if such proceedings are pending, or may, under the rules of the Code of Civil Procedure, be brought separately in a civil court.

## DECREE No. 2655, OF 8 SEPTEMBER 1954, LAYING DOWN REGULATIONS FOR THE HOLDING OF TRADE UNION CONGRESSES AND FEDERAL GENERAL ASSEMBLIES OF TRADE UNIONS<sup>1</sup>

*Art. 1.* The Ministry of Labour shall sponsor the holding of trade union congresses in Colombian Territory, subject to compliance with the rules and conditions laid down in the present decree.

*Art. 2.* The term "trade union congress" shall be deemed to mean a meeting of delegates or representatives of a number of trade union organizations affiliated to one or more legally recognized confederations, for the purpose of planning, studying and solving

trade union or labour problems related to the activities and efficient functioning of the organizations represented.

Meetings of members of a single trade union, of first or second degree, shall be known as trade union general assemblies or federal general assemblies respectively. The provisions of this decree shall apply to the convening of federal general assemblies, in so far as they are applicable thereto.

...

*Art. 4.* Trade union congresses may be convened only by one or more trade union confederations or by

<sup>1</sup> Spanish text in *Diario Oficial* No. 28581, of 30 September 1954. Translation by the United Nations Secretariat.



the head of the Department for the Supervision of Industrial Associations at the Ministry of Labour, on his own initiative, subject to the express approval of the Minister, where for any special reason he considers it desirable to do so or has received a request to that effect from two-thirds of the trade union organizations affiliated to one or more confederations and such confederations are either unable to convene a congress in accordance with this decree or, in the opinion of the head of the said department, refuse to do so without any valid reason.

*Art. 5.* To have the right to convene a trade union congress, confederations must have been in legal and normal operation throughout the year immediately preceding the convening of the congress, or from the date of their establishment, if this confederation is more recent.

*Art. 6.* The right to participate in, or to be represented at, trade union congresses shall be limited to trade union organizations registered as incorporated associations; operating legally and normally and having so operated for the six months preceding the meeting; having properly constituted executive boards; legally recognized by and registered with the Department for the Supervision of Industrial Associations; having the accounts relating to the administration and investment of trade union funds in good order; and having complied fully with the legal regulations on trade union control and supervision.

*Art. 7.* Notice of convocation of a national trade union congress must be given at least three months before the date of meeting, indicating the agenda, date and place for the congress. The Department for the Supervision of Industrial Associations must be notified at once of the bodies which are to attend the congress, their title, headquarters address, number and date of registration as incorporated associations, and lists of affiliated members, for the purposes of proper representation.

The same procedure shall be followed in convening district and municipal congresses or federal general assemblies; provided, however, that a period of not less than sixty days' notice before the date of meeting shall be sufficient.

*Art. 8.* At federal congresses, each confederation shall have the right to be represented by five delegates, each federation by three delegates and each trade union by a number proportionate to its active membership in accordance with the following scale:

25-100 members . . . . .	1 delegate
101-300 members . . . . .	2 delegates
301-500 members . . . . .	3 delegates
501-1,000 members . . . . .	4 delegates
Over 1,000 members . . . . .	5 delegates

Each delegate shall have one vote only and may not represent more than one organization.

*Art. 9.* No person may attend a trade union congress as a delegate unless he is an active member of a trade union organization—i.e., unless he has been admitted and enrolled in accordance with the statutes of the organization of which he is a member, is permanently employed in the activity, trade or occupation which the organization represents, and is up to date in the payment of his union dues.

. . .

*Art. 12.* Delegates or representatives sent to trade union congresses shall be elected by the general assembly of the organization concerned, or by the executive board or committee in the case of federations or confederations, a labour inspector, or in his absence the principal local governmental officer, being present in all instances. Voting shall be by secret and written ballot, and when more than two delegates have to be appointed, each is to receive the appropriate quota of the total vote. The duties of the labour inspector, or in his absence the principal local political officer, shall be merely to settle any point that may arise as to the interpretation of the rules applicable, to ensure that there is a legal or statutory quorum, to check the credentials as active trade union members of those participating in the voting, and to issue certificates as described below.

If the number of delegates elected is larger than that specified under the present regulations for the particular organization, the election shall not be declared null and void; those elected in excess shall be eliminated on the basis of the smallest number of votes or the order of preference on the ballot papers. This operation shall be performed at the time of counting the votes and shall be noted in the appropriate record.

*Art. 13.* The credentials of all delegates shall consist of a certified copy of the record of the meeting at which they were elected and a certificate from the official who supervised the voting. A copy of this certificate shall be forwarded to the Department for the Supervision of Industrial Associations. It shall give the following particulars:

- (1) A statement that the official has seen the order recognizing the organization as an incorporated association (giving the number, date and source of the relevant order and the number and date of the official journal in which it was published); the register of affiliated members; the contributions register and counterfoils of receipts; the minutes of the general meetings and the meetings of the executive board as well as the legally approved statutes, which must be in conformity with the legislative provisions in force;
- (2) The total number of workers who are active members of the organization and the number of members present at the voting;
- (3) The number of meetings of the general assembly and executive board of the organization held during the previous six months, with the dates

thereof, as shown in the records; also, any significant activities carried out during the same period, with full particulars of such activities;

- (4) A statement that the notice convening the meeting at which the delegates were elected was given at least one week in advance by publication or in the manner specified in the statutes;
- (5) A statement that the supervising official was present in person at the meeting, that only workers who were active members of the organization took part in it, that the voting and counting of votes were carried out in the manner specified in this decree, and that the result of the voting was as shown in the record of the election (the voting figures being given); and
- (6) An attestation by the supervising official to the effect that the workers elected as delegates are active members of the organization—i.e., that they are registered in its books as regular members, that they are permanently employed in the particular trade or occupation, and that they are up to date in the payment of their trade union dues.

*Art. 14.* The credentials of delegates, issued in the manner prescribed in the foregoing provisions, shall be forwarded to the Department for the Supervision of Industrial Associations at least two weeks before the date of the meeting of the congress or federal assembly, to enable the department to examine them and decide whether the delegates elected fulfil the requirements laid down in the present regulations. In the case of federal or regional assemblies, the Department for the Supervision of Industrial Associations may delegate these powers to the competent labour inspectors.

*Art. 15.* Persons appointed by congresses, federal general assemblies or assemblies as members of the executive boards or committees or trade unions shall hold office for the period specified in the relevant statutes and shall be required to satisfy all the requirements laid down in article 422 of the Labour Code and in their own statutes. The election of any person not satisfying these conditions shall be null and void. The Ministry of Labour may strike off the list any member of a trade union executive body if it should be proved that since his election he has ceased to fulfil any of the

above-mentioned requirements, except in those cases specified in paragraph 3 of the said article 422 of the Substantive Labour Code.

*Art. 16.* Trade union congresses and assemblies may not concern themselves with party politics or questions of religion; nor may they propose, reject, approve or recommend candidates for posts that are filled by popular election; nor engage in activities other than those directly and strictly connected with the specific purposes of trade union organizations, as defined in the regulations governing their operation. Any infringement of this provision not censured or punished at the time by the congress or assembly itself shall constitute grounds for suspending recognition as an incorporated association of the trade union organization guilty of such infringement.

Decisions by a trade union congress which concern the Government shall have the force of mere recommendations.

*Art. 17.* All provisions of the present decree shall apply to federal general meetings or assemblies, commonly termed congresses, in so far as they are applicable thereto.

The provisions of this decree shall apply to trade union congresses of public servants and to federal assemblies of public servants in so far as they are applicable thereto.

*Art. 18.* Subsidies, grants-in-aid or donations by official bodies, public corporations or private individuals for the promotion or benefit of trade union congresses, shall be invested under the supervision of the Ministry of Labour, and evidence of the use of such funds shall be produced for the office of the Controller-General of the Republic in accordance with the regulations laid down by that body.

*Art. 19.* Any transactions, conclusions or resolutions of a federal general assembly or congress convened in contravention of any of the provisions of this decree shall be inoperative and legally null and void.

*Art. 20.* The present decree shall enter into force on the date of its promulgation.

## DECREE No. 1725, OF 2 JULY 1953, ESTABLISHING THE OFFICE OF REHABILITATION AND RELIEF<sup>1</sup>

*Art. 1.* The Office of Rehabilitation and Relief shall be established as an organ of the Presidency of the Republic. Its chief purpose shall be to carry out the plans for the economic rehabilitation of persons who have suffered damage as a result of events affecting public order.

...

<sup>1</sup> Text published in *Diario Oficial* No. 28243, of 10 July 1953, and received through the courtesy of the Permanent Mission of Colombia to the United Nations. Translation from the Spanish text by the United Nations Secretariat.

# DECREE No. 2675, OF 9 SEPTEMBER 1954, ESTABLISHING A SECRETARIAT OF SOCIAL ACTION AND CHILD WELFARE AND A WOMEN'S CIVIC SOCIAL SERVICE<sup>1</sup>

## I. ESTABLISHMENT

*Art. 1.* A National Secretariat of Social Action and Child Welfare shall be established under the Office of the President of the Republic as a decentralized body having legal status and funds of its own.

## II. PURPOSE

*Art. 2.* The Secretariat shall:

- (a) Organize and direct the Women's Civic Social Service;
- (b) Promote and regulate the occupations of nursing and social work and present recommendations to the appropriate bodies for improving the training of nurses and social workers;
- (c) Co-operate with public and private social security welfare and relief institutions with a view to achieving the utmost efficiency in those fields;
- (d) Establish official social welfare and relief institutions;
- (e) Incorporate within its structure, subject to the approval of the President of the Republic and the respective Minister in each case, the official national agencies and bodies engaged in social welfare or relief work;
- (f) Direct its activities with a view to a comprehensive policy of protection for mothers, children, adolescents and aged persons.

## IX. LIABILITY TO SERVICE

*Art. 19.* All Colombian women between eighteen and forty years of age, excepting those specified hereinafter, shall be required to perform civic social service for a period of six months.

*Art. 20.* Until such time as compulsory service is introduced, as provided in article 19, the National Secretariat of Social Action shall arrange for the performance of civic service by a panel, consisting in the first place of persons wishing to perform it voluntarily. Service shall be compulsory only if an insufficient number of persons volunteer or if, in the opinion of the Secretariat, the voluntary staff proves unsatisfactory.

*Art. 21.* When the service is made compulsory, persons required to perform it and not doing so, what-

ever the reason, shall pay the Secretariat of Social Action and Child Welfare a sum of money proportionate to the sum payable for exemption from compulsory military service in the case of males. The said sum shall be fixed by decree of the National Government.

## XI. PERFORMANCE OF SERVICE

*Art. 23.* Women's Civic Social Service shall consist of family, moral, civic and social training for those required to perform it, and the fulfilment of such administrative and technical functions as may be assigned to them with a view to improving the family, educational, moral, economic and health standards of the Colombian people. The type of service shall be in keeping with the educational level of the person required to perform it.

*Art. 24.* The six months of service shall be divided into two three-month periods. The first three months shall be devoted to training in appropriate schools which the Secretariat shall establish as convenient. The remaining three months shall be spent, regard being had to the training received and the ability shown, in practical work in charitable or social institutions, children's homes, maternity homes, rural welfare centres, working-class communities or elsewhere, as the Secretariat shall direct.

With reference to article 22, paragraph 2, the Ministry of Education, in co-operation with the Secretariat, shall determine the curriculum and the minimum hours of teaching in the educational institutions for women, so as to ensure proper training for the efficient performance of civic service.

*Art. 25.* Civic service shall be performed in the individual's own municipality, preferably during the day, and in such a way as not to break family ties or interfere with the supervision and authority of parents or guardians.

*Art. 26.* Daughters of diplomatic or consular officials of the State and women living abroad, in so far as their normal residence is outside Colombia, shall perform their civic service in accordance with special regulations to be laid down for such cases by the Board of Administration.

## XII. CERTIFICATE OF SERVICE PERFORMED

*Art. 27.* Once the women's civic service is made compulsory, a certificate from the Secretariat of Social Action testifying to performance of or exemption from service will have to be produced in the following circumstances:

<sup>1</sup> Text published by the National Printing House at Bogotá in *Asamblea Nacional Constituyente: Disposiciones constitucionales y legales 1952-1955* and received through the courtesy of the Permanent Mission of Colombia to the United Nations. Translation from the Spanish text by the United Nations Secretariat.

- a.* Before assuming any public office;
- b.* To obtain a licence to practise any profession;
- c.* To obtain a passport;
- d.* To obtain a driver's licence or take out a patent.

### XIII. EDUCATIONAL CIVIC SERVICE

*Art. 28.* The Secretariat shall establish through the departmental and municipal directors of education and by agreement with the Ministry of National Education, an Educational Civic Service section, with its own register, for the purpose of studying, classifying and registering all women qualified to act as instructors in urban and rural literacy campaigns. The

Departmental Directors of Education shall, in conformity with the standards to be laid down by the Secretariat, select from each municipality or from neighbouring municipalities, personnel capable of taking charge of groups of persons in either rural or urban areas and providing them with a minimum basic education.

*Art. 29.* Only such persons as have been unable to attend public or private schools and whose parents lack financial or other means shall qualify for the minimum basic instruction given by the Educational Civic Service.

...

## COSTA RICA

### NOTE

Act No. 1788, of 24 August 1954, establishes a National Institute of Housing and Town Planning.<sup>1</sup> According to article 4 of the Act, the aims of the Institute shall be:

“(a) To endeavour to improve the standard of economic and social well-being by providing the Costa Rican families with better housing and related amenities;

“(b) To plan the development and expansion of towns and smaller centres of population with a view to encouraging the best use of the land, choosing suitable sites for communal services, establishing efficient street systems and preparing investment plans for public works, to cater for future needs;

“(c) To afford Costa Rican families which are inadequately housed and in the ordinary way lack the means of obtaining suitable accommodation for themselves, the opportunity to acquire or rent accommodation of a standard sufficient to enable the occupants to develop and maintain their physical and mental health. Priority shall be given to the needs of the lowest income groups in the community, whether in the towns or in country districts;

“(d) To promote and undertake studies and investigations on all aspects of housing and town planning for the achievement of the Institute's objectives, giving the results the widest circulation, as a guide to determining the country's policy in such matters;

“(e) In developing its plans and programmes, to ensure proper co-ordination at their several stages—social and economic investigation, planning and construction—and in regard to such educational and

welfare work as the conduct of the said plans and programmes may require;

“(f) To advise State organs and other public bodies and to co-ordinate public and private efforts in housing and town planning matters when requested to do so; and

“(g) To adapt its plans and studies to the national economic and social development programmes and submit them to the Ministry of Public Health for approval of such aspects thereof as relate to health.”

Decree No. 20, of 14 December 1954, promulgates the regulations governing leases in respect of multiple-family apartment houses issued by the board of directors of the National Institute of Housing and Town Planning.<sup>2</sup> Article 1 provides that apartments or dwelling units in “multiple-family” apartment houses may be leased to persons who meet the following requirements:

“(a) The applicant must be the head of a family or be responsible for the support of persons who in fact constitute a family;

“(b) The applicant and the members of the family who will occupy the dwelling must not possess a home of their own or the means to acquire one;

“(c) The applicant must have a family income enabling him to pay a rental not exceeding 25 per cent of such income. A lease shall in no circumstances be granted where the rent charged represents less than 15 per cent of the applicant's family income;

“(d) The composition of the family must be such as to ensure proper use of the space and design of the dwelling.”

<sup>1</sup> Spanish text of the Act in *La Gaceta (Diario Oficial)* of Costa Rica No. 194, of 28 August 1954. English translation from the Spanish text by the United Nations Secretariat.

<sup>2</sup> Spanish text of the decree in *La Gaceta (Diario Oficial)* of Costa Rica, No. 13, of 18 January 1955. English translation from the Spanish text by the United Nations Secretariat.

# CUBA

## NOTE<sup>1</sup>

The most important legislative enactments in Cuba relating to the development of human rights in 1954 were as follows:

### 1. INTERNATIONAL COMMUNISM

Legislative decree No. 1456, of 3 June 1954 (*Gaceta Oficial* of 4 June 1954), is one of the measures enacted for the suppression of communism. It supplemented the provision of legislative decree No. 1170, of 30 October 1953 (*Gaceta Oficial* of 9 November 1953), under which the political or interventionist action of international communism was declared to be unlawful.

Under legislative decree No. 1456, engagement in communist activity of any kind is declared to be incompatible with employment in the public service.

In article 2, public service is defined, for the purposes of the declaration of unlawfulness referred to in the first article of the legislative decree, as service rendered to the State, a province, a municipality, an independent government agency or a government undertaking.

Article 3 authorizes the government to declare undesirable and to expel from the country any alien engaging in communist propaganda activities in Cuba or receiving orders or instructions for this purpose from outside the country. The immigration authorities will not authorize foreign agents or propagandists of international communism to enter Cuba.

Article 4 is of particular importance in that it declares illegal, and consequently prohibits the distribution and circulation of, any material or telegraphic or other dispatch or message which defends, praises or advocates communism as a political or social system or emanates from international or foreign organizations with communist tendencies.

### 2. PUBLIC LAW AND ORDER

The Public Order and Security Law promulgated by legislative decree No. 997, of 26 July 1953 (*Gaceta Oficial* of 6 August 1953)<sup>2</sup> was amended by legislative decree No. 1273, of 28 January 1954 (*Gaceta Oficial* of 5 February 1954) and repealed in its entirety by legislative decree No. 1390, of 3 May 1954 (*Gaceta*

*Oficial* of 8 May 1954). This Act, which was very severe and restrictive in its provisions, had been enacted to deal with an emergency situation.

### 3. AMNESTY ACT

Under legislative decree No. 1455, of 3 June 1954 (*Gaceta Oficial* of 4 June 1954), an amnesty was granted to persons convicted before 20 May 1954 of the offences under the code of social defence enumerated in the legislative decree and committed after 10 March 1952. The amnesty was granted in connexion with the elections that were to be held in the near future and was intended to apply to offences committed during the political and labour disturbances to deal with which the Government had been compelled to take repressive action.

### 4. REGULATIONS GOVERNING ASSOCIATIONS

Legislative decree No. 1577, of 4 August 1954 (*Gaceta Oficial* of 9 August 1954), provided that a provincial government could, of its own motion or on the application of an interested party, remove from the Register of Associations any association established in accordance with the legislation in force which failed to comply with the obligations prescribed by law or to fulfil the purposes set out in its articles of association.

Associations thus legally removed from the register were likewise declared to be dissolved.

The procedure to be followed in determining the disposition of movable and immovable property belonging to such associations was also prescribed by this legislative decree.

### 5. PASSPORT REGULATIONS

With regard to passport regulations, legislative decree No. 1463 (*Gaceta Oficial* of 11 June 1954) authorizes the Minister of State to withhold the issue of a Cuban passport to any person who by reason of his past or present conduct or other circumstances gives reason to suppose that he intends to go to certain countries in eastern Europe or to attend an international conference sponsored by international communism. Any necessary investigations and inquiries may be undertaken.

The legislative decree further provides that the validity of a passport must be certified by the Ministry of State not earlier than two months before the holder's

<sup>1</sup> Note prepared by Dr. José Manuel Cortina Corrales, Ambassador and First Counsellor to the Ministry of State, government-appointed correspondent to the *Yearbook on Human Rights*. Translation by the United Nations Secretariat.

<sup>2</sup> See *Yearbook on Human Rights for 1953*, p. 56.

date of departure from the country and that no carrier may accept a person as passenger unless the validity of his passport has been so certified.

## 6. SOCIAL LEGISLATION

The following social legislation was enacted in Cuba during 1954.

Legislative decree No. 1242, which promulgated the Organic Act of the Garment-Making and Allied Trades Funds, was published in the *Gaceta Oficial* of 15 January 1954.

Next in order of time was legislative decree No. 1457 (*Gaceta Oficial*, special issue No. 21, of 5 June 1954), which contains an amended version of the Organic Act of the National Transport Workers Retirement Fund.

Legislative decree No. 1538, concerning the Building Workers' Retirement Scheme, was published in the *Gaceta Oficial*, special issue No. 26, of 2 August 1954, and legislative decree No. 1765, to establish a social insurance scheme for the civil engineering industry, was published in the *Gaceta Oficial*, special issue No. 45, of 5 November 1954.

Legislative decree No. 1789, to establish a retirement fund for workers in the oil industry, was published in the *Gaceta Oficial*, special issue No. 46, of 13 November 1954.

Legislative decree No. 1824 (*Gaceta Oficial*, special issue No. 49, of 6 December 1954) made provision for the organization of compulsory association of provincial photographic workers while legislative decree No. 1835 (*Gaceta Oficial*, special issue No. 50 of December 1954) established a retirement fund for workers in the footwear industry.

Legislative decree No. 1557 (*Gaceta Oficial*, special issue No. 29, of 5 August 1954) established an insurance scheme for stenographers.

During 1954, various other legislative decrees were promulgated amending the legislation relating to the retirement and pensions fund for salaried employees and wage-earners employed by commercial undertakings, the retirement scheme for workers in the wheat-flour industry, the retirement and pensions fund for agents, salaried employees and wage-earners of commercial undertakings, the retirement fund for wage-earners and salaried employees in the tobacco industry, the barbers' retirement and pensions fund and the seamen's retirement fund.

The basic purpose of this social legislation is to provide for the welfare of workers in their old age or in case of disability, and to improve the system of social insurance by making it as broad as possible.

## 7. ELECTORAL LEGISLATION

The Electoral Code, contained in legislative decree No. 1215 of 1953, was amended by legislative decree No. 1377 of 3 May 1954 (special issue of the *Gaceta Oficial* of the same date), to provide more effective electoral safeguards in the elections to be held under the Code.

The amendments provided that each province should be represented in the Senate of the Republic by nine senators, six for the majority and three for the minority, and in the House of Representatives by one representative for every 45,000 inhabitants or fraction of more than 22,500.

The amendments further provided that the political party or the coalition of parties obtaining the largest number of votes in the election for senators would win the senatorial majority in the province, and the political party or coalition parties obtaining the second place in the voting would win the senatorial minority.

This arrangement guaranteeing the representation of minorities in the Senate is an innovation as proportional representation was hitherto applied only in the case of the House of Representatives.

The amendments further provide that no more than two members of an electoral board may belong to the same party, except where the number of parties putting forward candidates or established in the municipality is less than six, in which case only the posts of chairman and secretary will be filled by drawing lots.

It is also provided that the posts of member and clerk of an electoral board must be distributed on a proportional basis among all the parties and that an electoral board must always consist of a chairman, secretary, two members and two clerks.

The impartiality of the electoral boards is thus guaranteed.

The 1954 general elections, when all mayors, councillors, members of congress and the President of the Republic were elected, were held under these regulations and under constitutional procedures, which, after having been suspended in Cuba since 10 March 1952, were restored.

# CZECHOSLOVAKIA

## CONSTITUTIONAL ACT ON ELECTIONS TO THE NATIONAL ASSEMBLY AND ON ELECTIONS TO THE SLOVAK NATIONAL COUNCIL of 26 May 1954<sup>1</sup>

### Section 1

1. The deputies of the National Assembly and of the Slovak National Council shall be elected by the working people for a period of six years.

2. Suffrage is universal, equal and direct; the voting is secret. Every citizen may vote on reaching the age of eighteen; every citizen may be elected on reaching the age of twenty-one.

...

<sup>1</sup> The complete text of the Act appears in 26/1954 *Sbírka zákonů republiky československé* (Collection of Laws). The extracts quoted were kindly furnished, in English translation, by the Permanent Mission of Czechoslovakia to the United Nations.

### Section 3

A deputy of the National Assembly and a deputy of the Slovak National Council may be recalled from his functions at the request of his electors.

### Section 4

1. The procedure of elections to the National Assembly, as well as the manner of the recall of deputies of the National Assembly, shall be prescribed by Act.

...

## ACT ON ELECTIONS TO THE NATIONAL ASSEMBLY of 26 May 1954<sup>1</sup>

### PART I.—ELECTION SYSTEM

#### SECTION 1.—FUNDAMENTAL PROVISIONS

1. The working people designate to the National Assembly their best representatives, who are worthy of being deputies and who offer a guarantee that they will fulfil their tasks well and responsibly.

2. The elections to the National Assembly shall be held on the basis of universal, equal and direct suffrage by secret vote.

#### *Universal Suffrage*

#### SECTION 2

1. The right to vote to the National Assembly is held by every citizen who, on the day of the elections, has reached the age of eighteen, without distinction as to ethnic origin, sex, religious belief, employment, period of residence, social origin, property ownership and former activities.

2. Persons who have been lawfully sentenced to the loss of civic right do not have the right to vote for the period to which the aforesaid sentence applies. The same applies to persons who have been lawfully

<sup>1</sup> The complete text of the Act appears in 27/1954 *Sbírka zákonů*. The extracts quoted were kindly furnished, in English translation, by the Permanent Mission of Czechoslovakia to the United Nations.

incapacitated, either partially or fully, due to mental incompetency.

#### SECTION 3

Every citizen of the Czechoslovak Republic may be elected to the National Assembly who has the right to vote and has reached the age of twenty-one on the day of the elections.

...

### PART II.—LISTS OF VOTERS

#### SECTION 5.—REGISTRATION

1. Every citizen of the Czechoslovak Republic who has the right to vote shall register in the voters' lists according to his place of residence.

...

#### SECTION 7

1. At the latest thirty days before the day on which the elections are held the Council of the local National Committee shall place the lists of voters in a public place, in order that the population might examine them. The Council of the local National Committee shall advise the population of the fact that the lists of voters have been so placed in the manner that is customary in the locality concerned.

...



## SECTION 8

1. Every citizen shall have the right to notify the Council of the local National Committee concerned, either orally or in writing, of any mistakes or errors in the lists of voters and to propose remedy thereof. The Council shall take a decision concerning any such notification within three days and either make the respective correction in the list of voters or advise the complainant in writing of the reasons for which such correction cannot be made.

2. Should the complaint be so rejected, the citizen may submit it to the people's court exercising jurisdiction in the respective voting precinct. The court shall after an oral hearing arrive at a decision. This decision shall be final. In other respects and to a similar extent, the general provisions of the Court Rules of Civil Procedure apply. If the court so decides, the Council of the respective local National Committee shall make the correction in the list of voters. No court fees are charged in the case of such hearings.

## PART VII.—THE ELECTIONS

*Chapter 2.—Conduct of the Elections*

## SECTION 30.—PREPARATION IN THE POLLING PLACES

The chairman of the Precinct Election Board shall in the presence of the members of the Election Board examine the ballot box and seal it. He shall likewise ensure that the list of voters and the ballots are prepared. The elections may then start.

## SECTION 31.—THE BOOTHS RESERVED FOR THE MARKING OF THE BALLOTS

In each polling place there shall be a special booth for the marking of ballots which shall be separated from the rest of the polling place in such a manner as to ensure the secrecy of the vote. No one else may be

present in these booths except the voter, not even a member of the Election Board.

*Chapter 3.—Election Returns*

## SECTION 44.—ELECTION OF CANDIDATES

A candidate is elected if he has received more than half of all valid ballots handed in in the voting ward concerned.

## SECTION 50.—VALIDATION OF THE ELECTIONS

The validity of the elections of individual candidates to the National Assembly shall be ascertained by the National Assembly at its first session at the proposal of its Credentials Committee.

## PART VIII.—THE RECALL OF DEPUTIES OF THE NATIONAL ASSEMBLY

## SECTION 51

1. Any deputy of the National Assembly may be recalled from his function at the decision of the electorate of his voting ward.

3. The voter in the ward concerned shall vote on the recall of a deputy of the National Assembly in the election ward concerned by placing in the ballot box a ballot on which he has made a mark indicating whether he is voting in favour of the recall of the deputy concerned or not.

4. A deputy of the National Assembly shall be recalled from his function if at least a half of the voters entitled to vote have taken part in the vote and if more than half of the valid ballots placed in the ballot box are in favour of the recall.

## CONSTITUTIONAL ACT ON THE NATIONAL COMMITTEES of 3 March 1954<sup>1</sup>

*Section 1*

1. The National Committees are the local organs of state power of the working people of Czechoslovakia. As the broadest organizations of the working people, they are based, in their activities in the regions, districts and localities, on the bond between the workers, the peasants and the working intelligentsia.

<sup>1</sup> The complete text of the Act appears in 12/1954 *Sbírka zákonů*. The extracts quoted were kindly furnished, in English translation, by the Permanent Mission of Czechoslovakia to the United Nations.

2. In their respective wards, the National Committees shall direct the building up of socialism, both in the economic and the cultural field, in accordance with the directives of the Government and of the laws of the republic. It shall be their constant concern to see that the growing material and cultural requirements of the working people receive ever better and wider satisfaction. By all their activities they shall care for man and his well-being and strengthen the trust of the working people in the organs of the People's Democratic State.

*Section 3*

1. The National Committees are elected by the working people of the regions, districts, wards, villages and other localities for a period of three years. Suffrage is universal, equal and direct; the vote is secret. All citizens have the right of vote to the National Committees on reaching the age of eighteen years. All citizens may be elected on reaching the age of twenty-one years.

...

3. The National Committees shall constantly be subject to the control of the working people. Every member of a National Committee shall be responsible to the working people and shall be accountable to his electors for his activities as well as for the activities of

the entire National Committee. Every member of a National Committee may be recalled from his function at any time at the decision of his electors.

...

*Section 4*

The National Committees shall direct and control the work of their councils, sections and departments; they shall care for the observance of the laws, of the directives and decisions of the Government and of other regulations, they shall guard the rights of the citizens, they shall direct local economic and cultural development and thus make our cities and villages into places of satisfied and joyful work and of well-being.

...

## ACT ON THE NATIONAL COMMITTEES of 3 March 1954<sup>1</sup>

**CHAPTER I****THE LOCAL ORGANS OF STATE POWER***Section 1*

...

2. The National Committees are the organs of the working people. They shall organize the creative forces of the working people in order to make the life of all our citizens ever richer and happier. They shall acquire, mobilize and organize the active participation of all the inhabitants of their ward in the economic and cultural construction of the country, in the development of the republic, in securing the well-being of the working people under socialism and in the joint endeavour of the population for the maintenance of peace among nations.

...

*Section 3*

1. The National Committees are elected by the working people. The people delegate to the National Committees their best sons, who are worthy of representing them, and who offer a guarantee of fulfilling their tasks well and responsibly.

**CHAPTER V****THE NATIONAL COMMITTEES***Section 8*

1. Every citizen shall have the right to address himself to a National Committee or to any one of its members, or to the council of the National Committee, with any proposal or complaint he may wish to make

<sup>1</sup> The complete text of the Act appears in 13/1954 *Sbírka zákonů*. The extracts quoted were kindly furnished, in English translation, by the Permanent Mission of Czechoslovakia to the United Nations.

and must, within a set limit, receive a report on what has been done with respect to the matter in question.

2. The National Committees shall work in the closest contact with the working people of the territory for which they have been elected. In the solution of important problems and in discharging their tasks, the National Committees shall lean on the direct participation and initiative of the people; they shall call public meetings of the population, conferences of outstanding workers, etc. The National Committees shall learn from the experience of the working people; they shall avail themselves of and develop their initiative, and shall work for the participation of the greatest possible number of the population in their ward in the work of the National Committees.

3. It shall be the inalienable right of the citizens to control the National Committees in the discharge of their functions and to criticize their work. The National Committees shall at all times give consideration to such criticism, they shall reply to every concrete criticism and utilize it in order to improve their work.

4. The National Committees shall be accountable to their electors for their activity and shall render periodical accounts and reports on their work to the citizens of their ward.

**CHAPTER VI****THE TASKS AND ACTIVITIES  
OF THE NATIONAL COMMITTEES***Section 9*

1. The fundamental tasks and activities of the National Committees shall be to build and strengthen, subject to the directives of the Government, the socialist order in the cities and villages and make the care for the well-being of man their everyday concern.

They shall in particular care for the fullest satisfaction of the daily requirements and needs of the working people. They shall look after the development of the cultural standards of the people through the constant improvement of housing, health and educational services and facilities and the further improvement of all installations and facilities serving the people.

...

## CHAPTER VII

### THE STANDING COMMISSIONS OF THE NATIONAL COMMITTEES

#### Section 14

1. From among its members each National Committee shall elect standing commissions which shall be in charge of the individual sectors of the Committee's work. By their work in the standing commissions, the members of the National Committees take part in the daily fulfilment of the commission's tasks. Through the intermediary of the standing commissions the National Committees shall ensure the participation of the broad sections of the working people in the administration of the State and orientate their initiative towards the fulfilment of the tasks of economic and cultural development.

...

#### Section 15

1. The standing commissions shall assist the National Committee in the successful fulfilment of its economic plans, in the further improvement of the material and cultural standards of the people and in the discharge of all other tasks incumbent upon the National Committee.

2. The standing commissions shall take part in the preparation of the resolutions and decisions of the National Committee and of its Council; they shall exercise control over the implementation of the resolutions and decisions of the National Committee and its Council; they shall take part in the implementation of the resolutions and decisions of the National Committee, its executive organs and of the other organs in the territory for which the National Committee has been elected; they shall discuss and deal with the proposals and complaints of the population and render account thereof to the National Committee or to its executive organs with proposals for their solution and discharge all tasks entrusted to them by the National Committee.

...

#### Section 16

The standing commission shall, for the purpose of collaboration and participation in their work, establish large groups from among outstanding workers in all sectors of the economy, of science and the arts and from among the population, who can make an important and useful contribution to the work in the sector entrusted to the respective standing commission. The function of these groups is an advisory one.

## CHAPTER VIII

### RIGHTS AND OBLIGATIONS OF MEMBERS OF THE NATIONAL COMMITTEES

...

#### Section 18

...

2. Every member of a National Committee shall be in constant contact with his electors and give careful consideration to their every wish and complaint. He shall apply the experiences acquired from his work among the electors to the activities in the National Committee and its commissions. He shall guide his electors to become conscious citizens of the People's Democratic State and shall be an example to them in his civic life and in his work.

...

4. Each member of the National Committee shall through his work, his personal example, and in particular by his care for the needs and requirements of the people, strengthen the trust of his electors in the People's Democratic Order. He shall hold regular meetings with his electors at which he shall render account of his activities and enable the electorate to express their views regarding his work as well as the work of the National Committee concerned as a whole.

#### Section 19

1. The function of a member of a National Committee shall be an honorary one. He shall, however, receive guarantee that he will be able to exercise his mandate without detriment to his earnings in his place of employment and shall be entitled to compensation for expenditures incurred in the discharge of his functions.

2. The discharge of the obligations of a member of a National Committee shall not entail curtailment of rights and claims arising out of his employment.

...

# ACT CONCERNING THE ELECTION OF MEMBERS OF NATIONAL COMMITTEES of 3 March 1954<sup>1</sup>

## PART I.—ELECTORAL SYSTEM

### ARTICLE 1.—GENERAL PROVISIONS

(1) The working people shall choose to serve as members of national committees the best of their number, who shall be persons qualified to represent them and such as can be counted on faithfully to perform their duties.

(2) Elections to national committees shall be conducted by secret ballot and by universal, equal and direct suffrage.

### ARTICLE 2

1. All citizens of the Czechoslovak Republic who have attained the age of eighteen years on the date of the election, without distinction as to ethnic origin, sex, religion, occupation, length of residence, social origin, means or previous activity, shall have the right to vote in elections to national committees.

2. The foregoing shall not, however, apply to persons who have been sentenced by final judgement to forfeiture of civic rights, for the duration of such forfeiture, or to persons who have been declared by final judgement to be wholly or partially incompetent by reason of a mental disorder.

### ARTICLE 3

Any citizen of the Czechoslovak Republic who has the right to vote and who has attained the age of twenty-one years by the date of the election may be elected to a national committee.

...

## PART II.—ELECTORAL ROLLS

### ARTICLE 5.—REGISTRATION

1. All citizens of the Czechoslovak Republic who have the right to vote shall register their names in the electoral rolls of their place of residence.

...

### ARTICLE 7.—COMPOSITION OF ELECTORAL ROLLS

1. Not later than thirty days before the date of the election, the council of the local national committee shall exhibit the electoral rolls in its premises for inspection by citizens. The council of the local national committee shall notify citizens by the means custom-

ary in the locality that the rolls have been exhibited for inspection.

...

### ARTICLE 8.—OBJECTIONS

1. Any citizen may, orally or in writing, bring any errors or irregularities in the electoral rolls to the attention of the council of the local national committee and propose their rectification. The council shall take a decision within three days and shall either make the necessary correction in the electoral rolls or inform the applicant in writing why the correction cannot be made.

...

## PART V.—ELECTIONS

...

### Chapter 2.—Voting Procedure

### ARTICLE 64.—ARRANGEMENTS AT POLLING STATIONS

Before voting is begun, the chairman of the district electoral board shall inspect and seal the ballot box in the presence of the members of the board. He shall also ensure that the lists of candidates and the ballot papers are prepared. The voting shall then begin.

### ARTICLE 65.—VOTING BOOTHS

Special booths for the completion of ballot papers shall be provided at the polling stations in order to ensure the secrecy of the ballot. No one, not excepting the members of the electoral board, may be present in a booth simultaneously with a voter.

...

### Chapter 3.—The Count

...

### ARTICLE 78.—RESULTS OF THE ELECTION

1. The candidate elected shall be the one who obtains the absolute majority of all valid votes cast in the electoral district.

...

## PART VI.—REMOVAL OF MEMBERS OF NATIONAL COMMITTEES

### ARTICLE 86

1. Any member of a national committee may be removed at any time by decision of his constituents.

...

<sup>1</sup> Czech text in 14/1954 *Sbírka zákonů*. English translation by the United Nations Secretariat.

# ACT ON THE STATE PLAN OF DEVELOPMENT OF THE ECONOMY OF CZECHOSLOVAKIA FOR THE YEAR 1954 of 20 January 1954<sup>1</sup>

## CHAPTER I

### THE PRINCIPAL TASKS OF THE STATE PLAN OF DEVELOPMENT OF THE NATIONAL ECONOMY FOR THE YEAR 1954

#### Section 1

1. The fundamental task of the State Plan of Development of the national economy for the year 1954 shall be the considerable raising of the standard of living of the working people on the basis of the further increase of production, the productivity of labour and all-round economy.

...

## CHAPTER III

### DEVELOPMENT OF THE MATERIAL AND CULTURAL STANDARDS OF THE POPULATION

#### Section 6

1. As a result of increased production, national income in 1954 is to increase by 7.7% as against that of 1953; the share of personal consumption in national income is likewise to be augmented considerably. This rise in national income is to be ensured by an increase of 3.8% in the productivity of labour in industry and of 10.3% in housing construction and by a reduction of production costs in industry and in the other sectors of the national economy. Over-all production costs in industry are to be reduced by 2.37%.

2. The number of persons employed in the national economy is to rise by 166,000; there is to be additional employment for 75,000 women who are housewives and for 24,000 persons with reduced working ability.

3. The purchasing power of the population is to increase considerably. Retail turn-over is to rise by 10.9%. The supplying of rural communities is to improve by an increase of 29.1% in the retail turn-over of co-operative stores.

...

<sup>1</sup> The complete text of the Act appears in 2/1954 *Sbírka zákonů*. The extracts quoted were kindly furnished, in English translation, by the Permanent Mission of Czechoslovakia to the United Nations.

5. The turnover of restaurants, cafeterias, automats, canteens, etc. is to rise by 11.4%.

6. There is to be a reduction in retail prices of consumer goods, which, together with increased incomes of the population, will represent a further important rise in real wages.

7. Forty thousand new apartments are to be ready for use, 27,000 of them with central heating. The granting of long-term credit, adequate supplies of building materials and their price reduction are to make possible the construction of 10,000 family houses through self-help.

8. The volume of repairs and maintenance work on housing and apartments is to grow by 21%. The capacity of communal laundries is to increase by 22% and of communal baths by 42.7%. There is likewise to be a considerable expansion of rapid transport by trolley-bus.

9. The capacity of hospitals is to increase by 6.5%; out of this figure the number of beds in hospitals and maternity wards equals 5.1% and that in special institutions and sanatoria 8.4%. The capacity of crèches is to increase by 7.3%. The number of physicians in the medical centres of industrial enterprises and other undertakings is likewise to be increased.

10. Further progress is to be achieved in the expansion and improvement of the primary and secondary school system and their total enrolment is to increase by 66,000. Enrolment in vocational and industrial schools is to amount to 67,000 and at the universities and colleges to 50,000. Work is to be started on the construction of fifty-five primary and secondary schools and eight vocational schools and further new student hostels and canteens.

11. There are to be new achievements in the field of culture. There is to be an improvement in the artistic standards of theatre presentations and concerts and an accompanying increase in the number of audiences. Work is to be started on the construction of 19 new cinemas. Film production is to place particular emphasis on the production of coloured films. There is to be an expansion in the quantity and an improvement as to quality and variety of television programmes.

...

## THE BUDGET ACT FOR 1954 of 10 March 1954<sup>1</sup>

### SECTION 1

#### THE OBJECTIVES OF THE STATE BUDGET

The state budget is the basic financial plan of the State. All financial means appropriated under it for the fulfilment of the State plan of development of the

<sup>1</sup> The complete text of the Act appears in 15/1954 *Sbírka zákonů*. The extracts quoted were kindly furnished, in English translation, by the Permanent Mission of Czechoslovakia to the United Nations.

national economy are derived from the work of the people for the construction of their country. They shall accordingly be used for the building up of the country in accordance with the plan, for the lowest possible cost, thus ensuring their application for the further development of production and the rise of national income, to secure the raising of the material and cultural standards of the working people and for the support of the endeavour to maintain peace.

. . .

## ACT ON PROTECTION OF HEALTH AT WORK IN UNIFIED AGRICULTURAL CO-OPERATIVES AND ON INDIVIDUAL FARMS of 27 October 1954

### SUMMARY<sup>1</sup>

The purpose of this Act, according to section 1, "is to ensure the prevention of risks to health in work in Unified Agricultural Co-operatives and on individual farms and thereby to contribute to the development of creative forces, to raising the productivity of labour and to the further improvement of the material and cultural standards of workers in agriculture."

Section 2 makes the Presidium of the Unified Agricultural Co-operatives and individual farmers responsible for ensuring that the general conditions prevailing at work are such as to provide adequate protection of the health of the workers concerned. Detailed procedures are laid down to this end.

The Presidium of Unified Agricultural Co-operatives are also to instruct their members and other workers in the co-operatives as to the need for observance of all measures providing for the protection of their health and to obviate all risks at work; on the farms of individual farmers this task is to be fulfilled by the executive organs of the National Committees.

Safety technicians are to be appointed in co-operatives who are to carry out their tasks in co-operation

with the respective organs of the National Committees. In the case of individual farmers the tasks of the security technician are to be carried out by the executive organ of the local National Committee.

Section 3 defines the obligation of workers in agriculture to conduct themselves in such a manner at work as not to endanger their own life and health or those of their fellow-workers.

Section 4 provides that: "The control over security measures at work in the Unified Agricultural Co-operatives and on the farms of individual farmers shall be carried out by the Agricultural Commissions of the Councils of Regional National Committees through their organs of labour inspection; the Agricultural Commissions of the Councils of the District National Committees shall also take part in this control. The competence of the organs of labour inspection covers all work places and facilities in each agricultural undertaking."

Section 5 defines in detail the task of the organs of labour inspection.

According to section 6, research in the field of the protection of health at work in agriculture shall be carried out by the Ministry of Agriculture.

Section 7 provides that, in the implementation of this Act, the Ministry of Agriculture and the Executive Organs of the National Committees shall act in close collaboration with the Organs of the Unified Trade Union Movement.

<sup>1</sup> The text of the Act appears in 51/1954 *Sbírka zákonů*. Summary by the United Nations Secretariat from an English translation kindly furnished by the Permanent Mission of Czechoslovakia to the United Nations.

## RATIFICATION OF INTERNATIONAL AGREEMENT

### A treaty on Legal Aid in Civil and Penal Matters<sup>1</sup>

<sup>1</sup> The Ordinance of the Minister of Foreign Affairs of 16 December 1954 announcing the entry into force of the treaty appears in 57/1954 *Sbírka zákonů*. A translation into English of the Ordinance was kindly furnished by the Permanent Mission of Czechoslovakia to the United Nations.

was concluded between the Czechoslovak Republic and the People's Republic of Bulgaria in Prague on 13 April 1954.

The National Assembly of Czechoslovakia approved the treaty on 26 May 1954, and the President of the Republic ratified it on 23 October 1954. The instru-

ments of ratification were exchanged in Sofia on 16 November 1954.

Under its article 89, the treaty was to enter into force one month after the exchange of the instruments of ratification—i.e., on 16 December 1954.

On the day on which the treaty entered into force,

under its article 90, the Agreement between the Czechoslovak Republic and Bulgaria on Mutual Legal Protection and Legal Aid in Civil and Trade Matters and the Agreement between the Czechoslovak Republic and Bulgaria on the Extradition of Criminals and Legal Aid in Penal Matters, signed in Sofia on 15 May 1926, lost their effect.

## DENMARK

### HUMAN RIGHTS IN DENMARK IN 1954<sup>1</sup>

#### PERSONAL LIBERTY

Those provisions of art. 71 of the Constitution of 5 June 1953<sup>2</sup> which concern judicial control of administrative deprivation of liberty have been implemented by a series of legislative acts, dated 11 June 1954.

Act No. 173 of that date, amending the Code of Judicial Procedure, provides for the insertion in the Code of a new chapter 43a regarding judicial control of administrative decisions relating to deprivation of liberty.

The field of application of this new chapter is determined by art. 468, as follows:

"The provisions of this chapter are applicable, unless otherwise provided by law, to deprivation of liberty, in other than criminal cases, which has not been ordered by a judicial authority and which is not warranted by the legislation on aliens."<sup>3</sup>

The main principles of the detailed rules laid down by articles 469-475 are as follows:

If the person who is deprived of his liberty by an administrative decision, or anybody acting on his behalf, requests that the legality of the decision be examined by a court of justice, the agency which has ordered the confinement or refused to reverse such order shall submit the case within five working days to the lower court at the place of residence of the person in question (art. 469, paras. 1 and 2).

The court assigns a counsel to the person in question unless he makes a request to the contrary (art. 470).

The court takes the necessary steps to establish the facts of the case and decides as to the examination of parties and witnesses as well as to the hearing of experts and the submission of evidence (art. 471, para. 1).

A request to have the case submitted to the court does not suspend the execution of the administrative decision or the maintenance of the confinement (art. 469, para. 3).

Claims for compensation for unjustified deprivation of liberty shall be adjudicated, at the request of the person concerned, in the course of the case regarding the legality of the confinement (art. 469, para. 6).

The court may decide that the name, profession and residence of any person involved in the case shall remain undisclosed in all published reports on the case (art. 473).

By a number of legislative enactments of the same date (nos. 175 to 182, of 11 June 1954) consequential amendments were introduced into several laws which contain substantive provisions regarding deprivation of liberty on administrative order.

According to article 55 of the 1953 Constitution, statutory provision shall be made for the appointment by the Folketing (House of Parliament) of one or two persons, who may not be members of the Folketing, and who shall supervise the civil and military administration of the State.

This article is implemented by Act No. 203, of 11 June 1954, which provides that the Folketing after each general election shall appoint a Commissioner (Ombudsmand), who shall supervise, on behalf of the Folketing, the civil and military administration of the State. The Commissioner shall decide whether Ministers, civil servants, or other persons in government service commit faults or are guilty of negligence in the execution of their task. He may act upon complaint by any individual or on his own initiative. He reports his findings to the Folketing.

It is expressly provided in art. 6 of the Act that a person who is deprived of his personal liberty shall be entitled to address the Commissioner in a confidential letter.

#### RIGHT TO PRIVACY

Article 72 of the 1953 Constitution<sup>4</sup> added to the previous guarantees of the inviolability of privacy by providing that the secrecy to be observed in postal, telegraph and telephone matters shall not be violated except by judicial order, or unless a particular exception is warranted by statute.

In implementation of this article, Act No. 202, of 11 June 1954, amending the Code of Judicial Procedure, has now laid down detailed rules regarding the right of the police to listen to private telephone conversations ("wire-tapping").

<sup>1</sup> This note was prepared by Professor Max Sørensen, University of Aarhus, government-appointed correspondent of the *Tearbook on Human Rights*.

<sup>2</sup> See *Tearbook on Human Rights for 1953*, pp. 75-76.

<sup>3</sup> For the legislation on aliens, see *Tearbook on Human Rights for 1952*, pp. 47-48.

<sup>4</sup> See *Tearbook on Human Rights for 1953*, p. 66.



According to the new article 75a of the Code of Judicial Procedure, a court may order a telephone agency to admit police authorities to listen to telephone conversations to and from specified telephones within a determined period, if

1. There is demonstrable reason for assuming that communications are made to or from any person suspected of having committed certain serious crimes, and

2. It is to be assumed that listening on the line would be essential to the detection of such crimes.

If both of these conditions are fulfilled and there is manifest risk of forfeiting the purpose by waiting for a judicial order, the police authorities may listen on the line without previous judicial order, provided the suspicion relates to certain crimes of treason or to a crime which otherwise endangers human life, welfare or important communal values. In such cases the police shall report the matter to the court at the same time as it is decided to undertake the listening. The court decides whether the listening shall be approved and if necessary continued. If no judicial order is made within twenty-four hours, the listening shall be discontinued.

Notes and other records of irrelevant conversations

shall be destroyed as soon as it has been established that they are not pertinent to the investigation.

If a private telephone has been tapped, the court shall inform the holder of the telephone as soon as possible without prejudice to the investigation, and provided it is not otherwise inexpedient.

The new article 75b provides that a court may order the telephone administration to inform the police of telephones which are or have been connected with another specified telephone during a determined period, if

1. There is demonstrable reason to assume that such information will be important for the detection of a crime in certain serious categories, or

2. It is held likely that detection of a crime will only be possible through such information, and this measure is reasonably proportionate to the character of the crime, or

3. It is assumed that such information will be indispensable for the detection of a person who has repeatedly violated the privacy of another person in certain specified ways.

In urgent cases the police may dispense with any previous court order, but in such cases the relevant provisions of article 75a shall apply.

# DOMINICAN REPUBLIC

## NOTE<sup>1</sup>

### I. LEGISLATION

#### 1. NATIONALITY

By Act No. 3926, of 18 September 1954 (*Gaceta Oficial* No. 7747, of 22 September 1954) article 19 of the Civil Code is supplemented by a new paragraph. The article now reads as follows:

"Art. 19. If a Dominican woman marries an alien and wishes to acquire her husband's nationality, then, if under the law of his country she can acquire the said nationality, she shall make an express declaration to that effect, the particulars of which shall be noted in the marriage certificate. If she wishes to acquire her husband's nationality after the solemnization of the marriage she must apply for naturalization.

(As added in 1954) "If the procedure of naturalization is not applicable because under the law of the husband's country she acquires his nationality by reason of the marriage, she must make a declaration before the Secretary of State for the Interior, Police and Communications, to the effect that she opts for the nationality of her husband."

#### 2. ECONOMIC AND SOCIAL RIGHTS

Important legislation was enacted in 1954 to promote the social and economic advancement of the Dominican people.

(a) The statutory provisions contained in Act No. 985 of 1945 concerning the acknowledgment of children born out of wedlock, have been amended and supplemented by Acts Nos. 3805, of 30 April 1954, and 3945, of 25 September 1954 (*Gaceta Oficial* Nos. 7689 and 7751, of 5 May and 29 September 1954 respectively). Pursuant to these new enactments, and notwithstanding article 334 of the Civil Code, it is now possible, in cases in which a voluntary declaration of acknowledgment is not contained in the birth certificate, to acknowledge a child born out of wedlock by means of a formal and express declaration made before the registrar; in addition, the new enactments contain provisions relating to the establishment of paternal relationship by order of the court in specified cases.

(b) A new development in Dominican social policy is the institution of compulsory membership of pro-

fessional associations for persons who hold university degrees and practise a profession. Act No. 3796, of 3 April 1954 (*Gaceta Oficial* No. 7679, of 10 April 1954), established associations known as the *Colegios de Profesionales Universitarios*, and a national confederation of these associations, known as the *Confederación Nacional de Colegios de Profesionales Universitarios*. The object of these associations is to promote scientific and cultural activities within the professions and solidarity, mutual assistance and social insurance amongst their members and to uphold the Constitution, the laws and the democratic institutions of the republic.

The executive business of the Confederation will be conducted by a National Executive Committee, with many and varied duties.

(c) Act No. 3938, of 20 September 1954 (*Gaceta Oficial* No. 7750, of 27 September 1954) to amend articles 2 and 8 of Act. No. 603 of 1941 introduced certain improvements in the functioning of the children's courts.

(d) Act No. 3742, of 20 January 1954, as subsequently amended by Act No. 3946, of 29 September 1954 (*Gaceta Oficial* Nos. 7651 and 7753, of 27 January and 2 October 1954, respectively) has as its object to provide persons in dependent positions and in receipt of low incomes with sufficient means to enable them to spend the Christmas holidays with their families. The Act provides that, as from 1954, employers must pay to their employees who earn wages of RD \$200 or less a yearly extra allowance in the month of December. Detailed regulations concerning the application of the Act were laid down in a circular from the Department of Labour, Economic Affairs and Trade, dated 6 December 1954.

(e) Further progress has been made in the execution of housing programmes for workers and low-income groups; social improvement projects (*Barrios de Mejoramiento Social*) have been expanded and day nurseries, children's homes, farm schools, etc., have been built.

(f) In consequence of the Concordat between the Dominican Republic and the Holy See,<sup>2</sup> a number of legislative provisions were enacted, including Act No. 3928. By virtue of this Act any institution or association constituted in conformity with canon law is deemed to possess the capacity of a body corporate; the Act also contains other provisions concerning

<sup>1</sup> This note is based on texts and information received through the courtesy of Dr. Rafael O. Galván, Minister Plenipotentiary and Alternate Representative of the Dominican Republic to the United Nations. Translation from the Spanish text by the United Nations Secretariat.

<sup>2</sup> See below, under II.

ownership of property by the Catholic Church. Other legislative measures include Act No. 3929 to amend article 14 of the Compulsory Military Service Act; Act No. 3930 to amend articles 258 and 259 of the Penal Code and article 80 of the Code of Criminal Procedure (all published in *Gaceta Oficial* No. 7749, of 25 September 1954); Act No. 3936, containing provisions concerning religious ministrations to national institutions and religious education in public schools; and Act No. 3937, to institute judicial separation in respect of marriages contracted under Canon Law (both texts published *ibid.*)

In the same context, Act No. 3931 (*ibid.*) amends several articles of the Act governing documents relating to civil status (civil and religious marriages). By the new Act, both classes of marriage are declared fully valid in law—civil marriages contracted in conformity with civil law, and religious marriages solemnized in conformity with canon law.

Act No. 3932, of 16 September 1954 (*ibid.*) to amend article 1 of the Divorce Act provides that, without prejudice to the general rule that the death of one of the spouses or divorce has the effect of dissolving the marriage, nevertheless, if the marriage was solemnized according to canon law, the spouses are deemed *ipso facto* to have waived the right to petition for divorce, the consequence being that the civil courts cannot make a decree of divorce in respect of a marriage solemnized in conformity with canon law. These provisions apply to such marriages solemnized after 6 August 1954, as laid down in article 28, paragraph 1, of the concordat between the Dominican Republic and the Holy See dated 16 June 1954.

### 3. PENAL LAW

Act No. 3840, of 20 May, promulgated on 22 May 1954 (*Gaceta Oficial* No. 7699, of 29 May 1954) prescribes deportation as one of the penalties applicable to aliens who violate Act No. 483, of 6 April 1933 (relating to offences against the peace and good order of the State) or Act No. 1443, of 11 June 1947 (which prohibits communist and other organizations and activities that contravene the Constitution); in the case of any such offence by an alien deportation may either be the

sole penalty or be imposed as a penalty additional to other penalties prescribed in the said Acts.

### 4. EDUCATIONAL RIGHTS

On 18 November 1954 the Department of State for Education and the Fine Arts issued circular No. 97 concerning education in human rights. Programmes in celebration of the sixth anniversary of the Universal Declaration of Human Rights were to be carried out by schools throughout the nation. During the week preceding Human Rights Day, school time was to be devoted to study of and comments on the Declaration and its relation to the Dominican Constitution. The day of the anniversary, 10 December, was observed in all the schools, and United Nations and UNESCO material on the subject of human rights was distributed. Cultural organizations were encouraged to commemorate the adoption of the Declaration and the leading newspapers of the country were urged to reproduce the text of and to comment on the Universal Declaration.

## II. INTERNATIONAL TREATIES AND AGREEMENTS

The outstanding international instruments entered into in 1954 were the concordat and final protocol between the Dominican Republic and the Holy See, signed in the Vatican City on 16 July 1954. The concordat and protocol regulate the relations between the Dominican Republic and the Roman Catholic Apostolic Church and specify the rights and privileges to be enjoyed by that Church. These instruments were approved by the National Congress by resolution No. 3874 (*Gaceta Oficial* No. 7720, of 21 July 1954).

The International Telecommunication Convention, signed at Buenos Aires in 1952, the final protocol of the convention, the resolutions, recommendations and votes,<sup>1</sup> signed on behalf of the Dominican Republic at Buenos Aires on 22 December 1952, were approved by the National Congress by resolution No. 3722 (*Gaceta Oficial* No. 7671, of 22 March 1954).

<sup>1</sup> See *Yearbook on Human Rights for 1952*, p. 406.

# EGYPT

## NOTE

### FREEDOM OF INFORMATION

Proclamation No. 91, of 10 May 1954 (*Official Journal* No. 37 *bis*, of 1954) amended proclamation No. 39, of 12 August 1952, which abolished censorship. The effect of the amendment was that censorship was abolished only for newspapers and messages concerning newspapers and sent by telegraph or telephone, whether by cable or otherwise; and this abolition did not apply in exceptional circumstances where public safety and order were affected. Censorship of publications other than newspapers was restored.

### SOCIAL SECURITY

Act No. 36, of 23 January 1954 (*Official Journal* No. 6 *bis* Extraordinary, of 1954) supplemented Act No. 116, of 9 August 1950, on social assistance.<sup>1</sup> It was provided that, on the death of a person entitled to a disablement, old-age or widow's pension, the sums paid to the person entitled were to go instead to his or her family. If the recipient of a pension did not claim a particular payment after a maximum of three months from the date when it was due, he would lose his right to it in the absence of reasonable justification. He would lose all rights to his pension if he did not draw any payment for a period of six months.

### RIGHT TO EDUCATION

Act No. 210, of 3 May 1953 (*Official Journal* No. 36 *bis* B, of 1953), as amended by Act No. 373, of 30 July 1953 (*Official Journal* No. 62 *bis*, of 1953), and Act No. 399, of 8 July 1954 (*Official Journal* No. 53 *bis* of 1954), reorganized primary education. Primary education was made compulsory for children of both sexes between six and twelve. The child's father or guardian was to bear the obligation imposed by the Act, and penalties were laid down for failure to fulfil it. Sick or handicapped children were to be exempted from primary education, unless there were primary schools for handicapped children which offered sufficient facilities for all handicapped children of the locality.

Compulsory education was to be offered in primary schools, but a parent or guardian might provide for a child's education in any other public or private institution or at home, provided that the instruction given was at least equal to that of the primary school and that the competent educational authority was notified before the beginning of the school year.

Compulsory education was not to be enforced if sufficient primary schools were not available in a locality, or if children lived more than two kilometres from the nearest primary school.

No fees were to be required and a daily meal was to be served free throughout the school year.

Primary schooling was to last six years. Subjects to be taught included the Koran and religion. Non-Muslims were exempted from studying the Koran, and special lessons were to be arranged to instruct them in their own religions if their number was sufficient.

Corporal punishment was prohibited. The kinds of permissible punishment and the person entitled to inflict it were to be determined by the Minister of Education.

Higher primary schools (rural, commercial or feminine) were to be established to give cultural, social and practical training adapted to the needs of the local community. To enter such schools, pupils must have successfully finished their primary schooling and must not be over fourteen at the beginning of the school year. Education was to be given free, together with a daily meal. The course was to cover three years, but might be extended by the Minister of Education. He was also to decide upon the methods, curricula and rules on examination and promotion of pupils for an experimental term of five years.

The Act dealt also with examinations, promotion of pupils within schools and other details of administration.

Act No. 211, of 3 May 1953 (*Official Journal* No. 36 *bis*, of 1953) amended by Act No. 133, of 11 March 1954 (*Official Journal* No. 20 *bis*, of 1954) and Act No. 422, of 22 July 1954 (*Official Journal* No. 85, of 1954) reorganized secondary education. The Act organized secondary education in two stages, preparatory and advanced.

The preparatory stage was to cover four years. Pupils entering the first form were required to pass an entrance examination in Arabic and arithmetic and must not be under ten at the end of the calendar year or over twelve at the opening of the school year. New pupils might be admitted to the second, third and fourth forms if vacant places were available and subject to certain age limitations and examination requirements.

The number of pupils in a form must not exceed thirty-six. The subjects to be taught included the

<sup>1</sup> See extracts from this Act in *Yearbook on Human Rights for 1950*, pp. 78-79.

Koran and religion. Pupils successful in an examination to be held at the end of their fourth year were to be granted the Preparatory Education Certificate.

The advanced stage of secondary education was to be divided into general, feminine, technical, agricultural and commercial education.

The general secondary course was to last three years. Pupils entering the first form must not be over seventeen, and must be holders of the Preparatory Education Certificate. Priority was to be decided on the basis of age and examination performance. New pupils might be admitted to the second or third forms if vacancies were available and subject to certain age limitations and examination requirements. The number of pupils in any form might not exceed thirty-two.

In the second and third years the course was to branch into two sections: literary and scientific. Pupils might not be admitted to the second year course except after passing a qualifying examination.

The law laid down the subjects to be taught in the three years of general secondary education, and these subjects included the Koran and religion. At the end of the third year pupils successfully taking an examination were to receive the General Secondary Education Certificate.

Special provisions were to be made by decree for feminine, technical, agricultural and commercial advanced secondary education, having effect for an experimental period of five years.

The Act contained a number of provisions applying to both stages of secondary education, as summarized below.

Secondary education in both stages was to be free. The Minister was to establish any supplementary fees, not exceeding three pounds a year, and conditions of exemption therefrom. No pupil was to be admitted to a secondary school who did not fulfil a certain standard of physical fitness.

Non-Muslims were exempted from studying the Koran, and special lessons were to be arranged to instruct them in their own religions if their number was sufficient.

Corporal punishment was prohibited. The kinds of permissible punishment and the person entitled to inflict it were to be determined by the Minister of Education.

The Act also contained details on examinations, promotion of pupils within schools and other questions of administration.

# ETHIOPIA

## PUBLIC RIGHTS PROCLAMATION<sup>1</sup>

No. 139 of 25 September 1953

*Whereas*, by article 6 of Our order No. 6 of 1952,<sup>2</sup> We provided that the Federal Act for the federation of Eritrea with Ethiopia, shall apply in all its details and provisions throughout all the territories of Our federated Empire; and

*Whereas*, by Our ratification of said Federal Act under date of 11th September, 1952, and by article 8 of the aforesaid Order We provided that said Federal Act, as well as Our Constitution, shall be the supreme law throughout the territories of Our Empire; and

*Whereas*, paragraph 7 of the said Federal Act<sup>3</sup> requires that the Federal Government as well as Eritrea shall ensure the enjoyment in Eritrea of human rights and fundamental liberties, including those set forth in said paragraph; and

*Whereas*, by article 7 of the aforesaid Order, we provided that all rights and privileges set forth in Our Constitution<sup>4</sup> shall devolve upon all nationals of Our Empire and upon all inhabitants thereof and, further, that all Eritrean citizens shall enjoy throughout Our Empire all those rights, privileges and immunities of all Our other subjects and citizens of any other part of Our Empire, nor shall there be denied to any person anywhere within Our Empire the equal protection of the laws; nor shall the privileges and immunities of any of Our subjects be abridged anywhere within Our Empire; and

*Whereas* it is expedient and necessary that Our Eritrean citizens as well as all residents in Eritrea be assured the same rights and fundamental liberties as well as those enjoyed by Our subjects and by the inhabitants in the rest of Our Empire; that residents of Eritrea be assured the enjoyment of human rights and fundamental liberties not only in Eritrea as required by paragraph 7 of the Federal Act, but also throughout Our Empire and that there be uniformity and equality throughout Our Empire in the enjoyment of the human rights and fundamental

liberties in general as well as those indicated in particular in said paragraph 7 of the Federal Act as being Our included in the general.

NOW THEREFORE, in accordance with article 9 of Constitution,<sup>5</sup> We proclaim as follows:

1. In addition to existing treaties, international conventions and obligations extended throughout the federation by the provisions of article 5 of Our Federal Incorporation and Inclusion of the Territory of Eritrea within the Empire of Ethiopia Order No. 6 of 1952, all treaties, international conventions and obligations and executive agreements henceforth concluded and or ratified shall be the supreme law throughout the territories of Our federated Empire, shall be included as an integral part of federal legislation and shall throughout the Empire be self-executory. In the present proclamation, all references to federal laws or legislation, shall be held to include the treaties, international conventions and executive agreements referred to in the present article.

2. Full faith and credit shall be given in and by every government in the federation to the public acts, records and judicial proceedings of every other government in the federation provided, however, that in case of judicial proceedings, the same shall have been had with full jurisdiction as to the person and subject matter involved and shall be in courts of record.

3. No government or part of the federation shall make or enforce and no official, officer or agent thereof shall enforce any law which shall abridge the privileges or immunities of nationals of the federation or deprive any person of life, liberty or property without due process of law, or deny to any person within its jurisdiction the equal protection of the laws. The fact that a person serving in any governmental office, function or capacity whether federal or otherwise shall, in acting in violation of the provisions of the present article, have in fact exceeded his authority or, contrariwise, shall have been acting pursuant to legislative or administrative authority granted to him by any government, federal or otherwise, shall not preclude the application of the provisions of the present article.

4. No person serving within the Empire of Ethiopia in any governmental office, function or capacity of any government, whether federal or otherwise, shall in any way utilize his office, function or capacity to

<sup>5</sup> This article deals with the decree-making power of the Emperor.

<sup>1</sup> English text in *Negarit Gazette* No. 3, of 25 September 1953, received through the courtesy of the Ethiopian Mission to the United Nations.

<sup>2</sup> English text, *ibid.* No. 1, of 11 September 1952.

<sup>3</sup> Paragraph 7 of the Federal Act corresponds to paragraph 7 of General Assembly resolution 390 (V) adopted on 2 December 1950 (see *Tearbook on Human Rights for 1950*, p. 536). The entire text of the Federal Act of 11 September 1952 is published in *Final Report of the United Nations Commissioner in Eritrea, General Assembly, Official Records: Seventh Session, Supplement No. 15 (A/2188)*, New York, 1952, p. 45.

<sup>4</sup> See *Tearbook on Human Rights for 1946*, p. 102.

restrict, impair, diminish, suspend or threaten to restrict, impair, diminish, suspend or in fact, to restrict, impair, diminish, suspend or destroy as regards any person or any group or class of persons including judicial persons anywhere within Our Empire the human rights and fundamental liberties as prescribed in Our Constitution, or in article 7 of Our order No. 6 of 1952, known as the Federal Incorporation and Inclusion of the Territory of Eritrea within the Empire of Ethiopia Order, or in any of Our federal laws, including the present proclamation. The fact that a person serving in any governmental office, function or capacity whether federal or otherwise shall, in acting in violation of the provisions of the present article have, in fact, exceeded his authority, or contrariwise, shall have been acting pursuant to legislative or administrative authority granted to him by any government, federal or otherwise, shall not preclude the application or diminish the scope of application of the provisions of the present article.

5. Any person serving within the Empire of Ethiopia in any governmental office, function or capacity, whether federal or otherwise, who shall conspire with or order another whether or not such other shall be a person serving in any governmental office, function or capacity, to restrict, impair, diminish or suspend as regards any person or any group or class of persons including judicial persons within Our Empire, or who shall by his acts or omissions have wilfully and in fact, restricted, impaired, diminished, suspended or destroyed as regards any person or any group or class of persons including judicial persons within Our Empire, the human rights and fundamental liberties as prescribed in Our Constitution or in article 7 of the aforecited order No. 6 of 1952, shall be guilty of a federal offence and shall upon conviction by a federal court be liable to a fine not exceeding Eth. \$500 or to imprisonment not exceeding one year or to both such fine and imprisonment except in case of death or grave bodily injury, in which case the maximum penalties may be a fine not to exceed Eth. \$5,000 or imprisonment not to exceed ten years, or both such fine and imprisonment. It shall be no defence to a conviction under the present article of the present proclamation that the accused, as a person serving within the Empire of Ethiopia in any governmental office, function or capacity, whether federal or otherwise, shall have been empowered by legislation or grant of administrative authority to violate the said human rights and fundamental liberties referred to in the present article. The fact that a person serving in any governmental office, function or capacity, shall, in acting in violation of the provisions of the present article, have, in fact, exceeded his authority, shall not preclude the application or diminish the scope of application of the provisions of the present article.

6. Any persons, including judicial persons conspiring together to prevent, or restrict any person, or group or class of persons whether natural or juridical,

in the free exercise of the human rights and fundamental liberties provided for in Our Constitution or in article 7 of the aforecited order No. 6 of 1952, shall be guilty of a federal offence and, upon conviction by a federal court, shall be liable to a fine not exceeding Eth. \$1,000 or to imprisonment, except in case of death or grave bodily injury in which case the maximum penalties may be a fine not exceeding Eth. \$5,000 or imprisonment not exceeding ten years or both such fine and imprisonment, and any person, including any juridical persons, who shall, in fact, and by intent have prevented or restricted any other person or group or class of persons whether juridical or natural from exercising the human rights and fundamental liberties as provided for in Our Constitution or in Article 7 of the aforecited order No. 6 of 1952, shall be guilty of a federal offence and, upon conviction by a federal court, shall be liable to a fine not exceeding Eth. \$1,000 or to imprisonment not exceeding one year or to both such fine and imprisonment, except in case of death or grave bodily injury in which case the maximum penalties may be a fine not exceeding Eth. \$5,000 or imprisonment not exceeding ten years or both such fine and imprisonment. It shall be no defence to a conviction under the present article of present proclamation that the accused, as a person serving within the Empire of Ethiopia in any governmental office, function or capacity, whether federal or otherwise, shall have been empowered by legislation or grant of administrative authority to violate the said human rights and fundamental liberties in the present article. The fact that a person serving in any governmental office, function or capacity, shall, in acting in violation of the provisions of the present article, have, in fact, exceeded his authority, shall not preclude the application or diminish the scope of application of the provisions of the present article.

7. In conformity with the provisions of article 6 of Our aforecited order No. 6 of 1952, the human rights and fundamental liberties provided for in paragraph 7 of the aforecited federal Act as regards residents in Eritrea are declared extended and made enforceable throughout Our Empire as regards residents of, as well as in, Eritrea and further as regards all residents in and of Our Empire, except that nothing in the aforecited order No. 6 of 1952, in the present proclamation or in the aforecited federal Act as extended throughout the Empire, shall require the recognition outside of Eritrea of any right of foreigners to acquire any rights in real property. When referred to in articles 8, 9 and 10 of the present proclamation the said federal Act shall be held, interpreted and understood to be the said federal Act as extended and made enforceable by article 6 of Our aforecited order No. 6 of 1952 and by the present article of the present proclamation.

8. No person serving within the Empire of Ethiopia in any governmental office, function or capacity of any government, whether federal or otherwise, shall

principles of the Constitution of the German Democratic Republic—e.g., certain provisions concerning family law.

Other provisions are to be applied and interpreted in accordance with the Constitution. The refusal to apply legal provisions on the strength of articles 157 and 242 of the Civil Code or of considerations of political economy or of other social doctrine is inadmissible. Thus the provisions of the law relating to mortgages must be applied even in the case of mortgages on ruined sites.

(c) The Second Civil Chamber of the Supreme Court dealt in several decisions with the meaning of the right to a hearing as it affects summonses and court procedure.

In judgement 2 Zz 77/53 of 28 January 1954 (*Neue Justiz* 1954, p. 7) the Civil Chamber ruled:

The serving of a summons by public announcement is an exceptional measure. The condition it presupposes—that the whereabouts of the accused are unknown—must be carefully checked. The mere written affirmation of the complainant or one of his relatives is not sufficient. The fact should be established by inquiry at the registrar's office. If the accused person is summoned by public announcement when it would have been possible to ascertain his whereabouts, the ensuing judgement is contrary to the law (Article 213, Rules of Civil Procedure) and must therefore be set aside.

For the same basic reasons the Civil Chamber ruled in judgement 2 Za 170/54 of 17 January 1955 that in the case of Labour Court proceedings, too, the regu-

larity of the summons issued to the defendant must be established before a judgement by default is pronounced. The order for the summons and the entry in the records indicating that it was issued are not sufficient.

(d) The Supreme Court judgement of 29 March 1954 (*Neue Justiz* 1954, p. 242) emphasizes the obligation upon the court (article 200, Rules of Criminal Procedure), in eliciting and ascertaining the actual facts of the case, to make a through and comprehensive investigation of the character of the individual concerned, as well as the social context and motivation of the act. The district court of Cottbus expresses the same principle in a decision of 1 February 1954 (*Neue Justiz* 1954, p. 252) pointing out the special importance of this duty for the complete establishment of the facts in the case of youthful offenders.

(e) In its judgement of 18 February 1954 (3 *UsT* II 10/55), the Third Civil Chamber ruled that the provision in article 79 of the Rules of Criminal Procedure, which stipulates that the joint defence of several defendants by a single attorney is permissible only if no conflict between the interests of the defendants is occasioned thereby, must be strictly observed, and that it is the duty of the court, particularly when it appoints official counsel for the defence, to look into this question thoroughly before appointing them. Failure to comply with the provisions of article 79 of the Rules of Criminal Procedure in appointing an official counsel for the defence is a violation of the right to a proper defence and the judgement against the accused must be set aside on appeal.

## REPORT BY THE CENTRAL STATE STATISTICAL OFFICE CONCERNING THE FULFILMENT OF THE NATIONAL ECONOMIC PLAN FOR 1954

### EXTRACTS<sup>1</sup>

#### I. DEVELOPMENT OF INDUSTRIAL PRODUCTION

Production was increased substantially as compared with 1953 in the case of many commodities, including the following:

	1954 : 1953 (Percentages)
Motor-cycles . . . . .	107
Artificial silk . . . . .	110
Synthetic fibres . . . . .	121
Domestic sewing machines . . . . .	160
Enamelware . . . . .	139
Electric domestic and heating appliances . . . . .	215
Wrist watches . . . . .	122

#### 1954 : 1953 (Percentages)

Furniture . . . . .	117
Musical and educational articles . . . . .	134
Woollen fabrics . . . . .	150
Cotton fabrics . . . . .	116
Carpets and runners . . . . .	116
Knitted undergarments and outer garments . . . . .	114
Leather footwear . . . . .	110
Fancy leather goods . . . . .	122
Margarine . . . . .	133
Butter . . . . .	114
40 per cent fat cheese . . . . .	143
Preserved fish . . . . .	188

#### II. AGRICULTURE

Ten per cent more nitrogen, 18 per cent more phosphoric acid and 9 per cent more potash were supplied to agriculture in 1954 than during the previous year.

<sup>1</sup> Text kindly furnished by the Ministry of Foreign Affairs of the German Democratic Republic. Translation by the United Nations Secretariat.



The number of servicing depots for machine and tractor stations was increased to 2,200.

The extensive use of modern technology and the widespread application of modern methods in the agricultural producers' co-operatives resulted in significant achievements in production during 1954. Production per hectare was sometimes higher than in the privately operated farms. Unit milk production increased by 233 kg as compared with 1953; in the privately operated farms the increase was 212 kg. This development suggests that the agricultural producers' co-operatives might with advantage be further consolidated.

Taking agriculture as a whole, the anticipated increase in the livestock population was not quite achieved. In 1954, the beef cattle production plan was not fulfilled in its entirety. Total milk production in 1954 showed a 10 per cent increase over 1953.

### III. INCREASE IN TURNOVER

The following increases over 1953 were registered for commodities of comparable price:

	1954 : 1953 (Percentages)
Food and delicacies . . . . .	108
Industrial goods . . . . .	123

The increase in the supply of industrial goods to the public fell short of the planned goals.

In addition to the 28,600 sales centres of the consumers' co-operatives, 58 rural depots were established between March and September 1954 to supply the rural population more efficiently. This brings the number of these depots, which offer a wide selection of goods, up to 148.

The supply of staple commodities for public consumption increased in 1954 as compared with 1953 as follows:

	1954 : 1953 (Percentages)
Meat and meat products . . . . .	110
Fish and fish products . . . . .	123
Fats . . . . .	116
Butter . . . . .	111
Margarine . . . . .	122
Fresh milk . . . . .	109
Leather footwear . . . . .	113
Worsted fabrics (wool) . . . . .	155
Cotton fabrics . . . . .	158
Motor-cycles . . . . .	107
Cameras . . . . .	218
Radio apparatus . . . . .	112
Portable typewriters . . . . .	108
Wrist watches . . . . .	124
Sewing machines . . . . .	160
Enamelware . . . . .	139
Refrigerators . . . . .	186
Water heaters . . . . .	190

### IV. DEVELOPMENT OF THE CULTURAL STANDARDS AND HEALTH OF THE POPULATION

Eight scientific training institutes were opened in 1954 for the training of scientific experts, bringing up the number of universities, colleges and independent institutes to 46.

The number of students attending courses increased from 46,844 to 57,538 and the number of students taking correspondence courses from 10,092 to 13,138. Ninety-five per cent of the students attending courses receive scholarship grants.

The number of students following day, evening and correspondence courses at technical schools rose from 72,173 at the end of 1953 to 79,525; evening students and students taking correspondence courses constitute 34 per cent of the total number of technical school students.

In 1954, attendance at the people's colleges reached 1,277,000, representing an increase of 39 per cent over the previous year.

The number of pupils attending the people's music schools increased last year from 25,329 to 34,325.

Twenty-one thousand five hundred local and factory arts and crafts circles and groups are actively engaged in pursuing amateur art work.

During the 1953-54 season, 16,650,000 workers attended the theatre. The number of films exhibited rose by 24 per cent, and the number of cinema-goers by 29 per cent, as compared with the previous year. Weekly film shows are given in 75 per cent of the rural communities.

In 1954 the number of cultural establishments set up included 25 youth clubhouses, 1,200 youth clubrooms, 85 cultural and recreational clubhouses, 2,550 cultural and recreational clubrooms, 1,000 sports installations, 444 public libraries, including branch libraries.

There are 339,000 places available for the children of working mothers in kindergartens, nurseries, boarding establishments and crèches, an increase of 24 per cent as compared with the end of the previous year.

The number of places in homes for babies and infants was increased from 6,780 to a total of 7,950. In order to improve the health services to the public, the number of public polyclinics was raised from 260 to 284 and the number of rural clinics from 230 to 273. The number of hospital beds increased from 197,100 to 200,000. The steady improvement in the health services available to the public is also reflected in the decrease in the incidence of sickness. To take an example, the incidence of tuberculosis in 1954 was 13 per cent less than in 1953.

# ACT CONCERNING THE ELECTIONS OF 17 OCTOBER 1954 TO THE POPULAR ASSEMBLY OF THE GERMAN DEMOCRATIC REPUBLIC

of 4 August 1954

## EXTRACTS<sup>1</sup>

### I. PRINCIPLES OF ELECTION

*Art. 1.* Deputies to the Popular Assembly shall be elected by universal, equal, direct and secret suffrage based on the principle of proportional representation (second sentence of article 51 of the Constitution<sup>2</sup>).

### II. COMPOSITION OF THE POPULAR ASSEMBLY

*Art. 2.* (1) The Popular Assembly shall consist of four hundred elected deputies (article 52, third paragraph, of the Constitution<sup>2</sup>).

(2) The capital of Germany, Berlin, shall have the right to send sixty-six representatives to the Popular Assembly.

### III. RIGHT TO VOTE AND ELIGIBILITY FOR ELECTION

*Art. 3.* (1) All men and women of German nationality who have completed their eighteenth year on the day of election and are resident in the territory of the German Democratic Republic are entitled to vote in the elections to the Popular Assembly (article 52, first paragraph, of the Constitution<sup>2</sup>).

(2) Only persons registered on an electoral roll or in possession of a voting card may vote.

(3) All men and women of German nationality who have completed their twenty-first year on the day of election and are resident in the territory of the German Democratic Republic or of Greater Berlin are eligible for election (article 52, second paragraph, of the Constitution<sup>2</sup>).

*Art. 4.* (1) German nationals eligible to vote who on the day of election are in a foreign State where there is diplomatic representation of the German Democratic Republic may vote on the premises of the diplomatic mission.

[Paragraphs 2-4 concern the organization of such elections.]

*Art. 5.* The following shall not be entitled to vote and are not eligible for election:

1. Any person *non sui juris*, or provisionally under guardianship or under care because of a mental handicap;

2. Any person who does not enjoy civic rights;
3. Any person whose right to vote has been withdrawn as a result of a judicial decision.

*Art. 6.* Voting rights shall be suspended in the case of:

1. Mentally handicapped and subnormal persons in homes and institutions;
2. Convicted prisoners and persons detained pending investigation;
3. Persons held in custody by order of a court or police authority.

### IV. ELECTORAL DISTRICTS AND ELECTORAL COMMISSIONERS

*Art. 8.* (1) The Minister of Internal Affairs of the German Democratic Republic shall act as Electoral Commissioner of the Republic. The Minister shall appoint a deputy Electoral Commissioner.

(2) The following are the main duties of the Electoral Commissioner of the Republic:

1. To carry out the procedure for submitting nominations, check the nominations, and determine the election results;
2. To issue instructions for the preparation of ballot-papers, polling record forms, electoral rolls, voting cards etc.;
3. To organize the announcement of the election results;
4. To supervise the preparations for the election.

*Art. 11.* (1) The Electoral Commissioner for a town or municipality [Gemeinde] shall be the Mayor. The Electoral Commissioner for a municipal district [Stadtbezirk] shall be the chairman of the council of the municipal district. The chairman of the council of the municipal district, or the mayor, shall appoint the deputy Electoral Commissioner.

(2) The following are the main duties of the Electoral Commissioner of a town, municipal district or municipality:

1. To determine the electoral districts;
2. To draw up the electoral rolls;
3. To display and make public the electoral rolls;
4. To close the electoral rolls and transmit them to the election officers;
5. To decide on the polling stations;
6. To make public the time and place of polling;

<sup>1</sup> *Gesetzblatt* 54/667 (No. 69 of 10 August 1954). Text kindly furnished by the Ministry of Foreign Affairs of the German Democratic Republic. Translation by the United Nations Secretariat.

<sup>2</sup> See *Yearbook on Human Rights for 1949*, p. 77.

7. To give public notice of the appointment of the election officers;

8. To arrange for the announcement of the election results; to ascertain the results of the elections in the town, municipal district or municipality and transmit them to the Electoral Commissioner of the *Stadtkreis* or *Landkreis*.

## V. ELECTION COMMITTEES

*Art. 12.* Election committees shall be formed not later than 20 August 1954:

1. For the Republic, by the Government of the German Democratic Republic;

2. For the districts, by the council of the district;

3. For *Stadtkreise* and *Landkreise*, by the council of the town or *Kreis*;

4. For towns, municipal districts and municipalities, by the council of the town, municipal district or municipality.

*Art. 13.* (1) The Election Committee shall consist of the following:

1. The Electoral Commissioner, as chairman;

2. His deputy;

3. At least five persons entitled to vote, as members;

4. The secretary, who shall not be entitled to vote in the election committee, and the secretary's deputy.

(2) In the election committee of the Republic and in the election committees of the districts, each member shall have an alternate who shall replace him in the event of his absence or withdrawal.

(3) The election committee shall be convened by the Electoral Commissioner.

*Art. 14.* (1) The election committee of a town, municipal district or municipality shall settle any disputes which may arise with regard to the electoral rolls or the right to vote.

(2) The election committee of the Republic shall settle any disputes concerning the eligibility of a candidate to the Popular Assembly.

(3) The election committee of the Republic shall publish the results of the election.

*Art. 15.* Decisions of the election committee shall be by simple majority. In the event of a tie, the chairman shall have the casting vote.

## VI. NOMINATIONS

*Art. 16.* The electoral commissioner of the Republic shall invite nominations by public announcement not later than 20 August 1954.

*Art. 17.* Candidates for election to the Popular Assembly may be nominated only by associations which, in accordance with their statutes, contribute towards the democratic development of the political

and social life of the whole republic and whose organizations extend throughout the territory of the State (article 13, second paragraph, and article 53 of the Constitution<sup>1</sup>).

*Art. 18.* The associations entitled to nominate candidates, as provided for in article 17, have the right to submit joint nominations.

*Art. 19.* (1) Nominations shall be submitted to the Electoral Commissioner of the Republic not later than 12 September 1954.

(2) Nomination lists shall show the surname, given names and date and place of birth of each candidate and shall clearly indicate their occupation and place of residence.

(3) The following documents shall be submitted with the nomination lists:

(a) The candidate's written agreement to stand;

(b) A certificate from the mayor or chairman of the council of the municipal district testifying to the candidate's eligibility.

(4) If the mayor or chairman of the council of the municipal district refuses to issue such a certificate, the candidate and the association which nominated him may bring the matter before the *Stadtkreis* or *Landkreis* election committee and appeal against the latter's decision to the district election committee.

*Art. 20.* The election committee of the Republic shall decide not later than 22 September 1954, in open session, whether the nominations are acceptable.

*Art. 21.* If a nomination fails to meet the requirements set forth in article 19, the electoral commissioner of the Republic shall request compliance therewith by 20 September 1954.

*Art. 22.* One day after the approval of nominations (article 20), the electoral commissioner of the Republic shall publicly announce the nominations, giving the names of the candidates.

*Art. 23.* (1) If a candidate withdraws before the election, the association which nominated him shall be entitled to nominate another candidate. If a joint nomination was submitted, another candidate shall be nominated by joint declaration of the associations which submitted the joint nomination.

(2) The withdrawal of a candidate shall be confirmed by the election committee of the Republic, which shall also decide whether to accept the new nominee.

## VII. APPEARANCE OF CANDIDATES BEFORE THE ELECTORS

*Art. 24.* Candidates are required to appear before the voters, to give information concerning their careers, their proposals for participation in the Popular

<sup>1</sup> See *Tearbook on Human Rights for 1949*, pp. 74 and 77 respectively.

Assembly and the way in which they propose to discharge their responsibilities as deputies.

*Art. 25.* The voters are entitled to reject candidates. In the event of rejection, the procedure set forth in article 23 shall be followed.

#### IX. ELECTORAL ROLLS

*Art. 27.* (1) The electoral commissioners of towns, municipal districts and municipalities shall prepare rolls by electoral districts of the people entitled to vote in the area over which they have jurisdiction. The electoral rolls shall be publicly displayed from 18 September to 11 October (including Sundays).

(2) If there is more than one electoral district, a separate electoral roll shall be prepared for each district.

(3) Each person entitled to vote may vote only in the electoral district where his name is entered in the electoral roll. This does not apply to holders of voting cards.

(4) Holders of voting cards may vote at any polling station in the German Democratic Republic or in the polling stations specially set up for the occasion.

#### X. ELECTION OFFICERS

*Art. 33.* (1) Election officers shall be appointed for each electoral district. They shall comprise a chairman, a vice-chairman, at least three members and a secretary without vote as an officer.

(2) Each member and the secretary shall have an alternate who shall act as replacement in the event of withdrawal or absence.

#### XI. POLLING

*Art. 35.* Polling shall be public; as a rule polling hours shall be from 8 a.m. to 8 p.m.

*Art. 36.* (1) The chairman of the election officers shall be in charge of the polling.

(2) Polling shall be considered officially open when the chairman of the election officers inducts the vice-chairman, members and secretary by means of a handshake, thus formally appointing the officers.

(3) If, at the beginning of polling, the election officers do not constitute a quorum, the chairman shall appoint the members necessary to form a quorum from among the voters who have arrived to cast their ballots.

(4) The chairman and the secretary may not absent themselves at the same time during the polling. If one of them leaves the polling station temporarily, his deputy shall replace him.

*Art. 37.* (1) Before polling begins, the election officers must make sure, in the presence of the voters, that the ballot-box is empty. The ballot-box shall be

closed and sealed; it may not be opened until the polling is completed.

(2) Only the officially prepared ballot-papers issued in the polling station may be used for voting.

(3) Every voter shall have the right to make alterations on his ballot-paper.

*Art. 38.* (1) Every voter shall have access to the polling station.

(2) The election officers may order any person who disturbs the orderly polling procedure to leave the polling station.

#### XII. VERIFICATION AND CONFIRMATION OF THE ELECTION RESULTS

*Art. 41.* (1) When the polling is completed, the ballot-papers shall be taken from the ballot-box and counted. At the same time, the number of entries in the electoral rolls and the number of voting cards shall be checked. If there is a discrepancy, a note to that effect shall be entered in the polling record and, if possible, the discrepancy shall be cleared up.

(2) The votes shall be counted in public by the election officers.

*Art. 42.* (1) After the ballot-papers have been counted, the chairman of the election officers shall determine whether each ballot-paper is valid.

(2) In case of doubt as to whether a ballot-paper is valid, the decision shall rest with the election officers.

(3) Ballot-papers declared invalid by the election officers shall be numbered consecutively and entered in the record, which shall also indicate the reasons why the ballot-papers have been declared invalid.

*Art. 46.* (1) Deputies' seats shall be allocated to nomination lists in proportion to the number of votes cast for each nomination.

(2) Deputies' seats shall be allocated to candidates in the order in which their names appear on the nomination lists.

*Art. 47.* The Electoral Commissioner of the Republic shall inform the elected deputies not later than seven days after the election that they have been elected.

#### XIII. VALIDITY OF THE ELECTIONS

*Art. 49.* Should it be found that irregularities have occurred during the election which have affected its result, the entire election shall be declared null and void.

*Art. 50.* (1) The Electoral Commissioner shall place any complaints concerning the validity of the election before the Popular Assembly for decision at its earliest meeting (article 59 of the Constitution).

The decision concerning the complaint shall be communicated forthwith to the association which raised the complaint.

(2) If the Popular Assembly decides that the complaint is justified and declares the election to be invalid, a new election must be held within three months. The Government of the German Democratic Republic shall fix the day for the new election.

(3) The new election shall be held in accordance with the provisions of this Act.

(4) The election officers, election committees,

electoral districts and polling stations shall remain the same.

(5) The same electoral roll shall be used for the new election as was used for the original election; it shall, however, first be corrected and then displayed again.

(6) New nominations shall be put forward for the new election.

*Art. 52.* If the voters demand the recall of a deputy, the Popular Assembly shall decide the question of further membership in accordance with article 59 of the Constitution.

## REGULATION CONCERNING THE ESTABLISHMENT OF MEDIATION BOARDS IN THE GERMAN DEMOCRATIC REPUBLIC

of 20 May 1954

### EXTRACTS<sup>1</sup>

#### *Article 1*

##### PURPOSE OF THE MEDIATION BOARDS

The purpose of the mediation boards is to try to reconcile the parties to a private dispute before it is brought to court. The mediator's task is to ensure that citizens respect their fellow-citizens and conduct themselves in a responsible manner in their relations with others.

#### SECTION 1

##### *Article 3*

##### ELECTION OF THE MEDIATOR

(1) The office of mediator is honorary.

(2) The mediator shall be elected by the people's representatives of the municipality or municipal district concerned for a three-year period.

(3) The election shall be held on the basis of nominations which the Council of the municipality or municipal district shall transmit to the people's representative in consultation with the chief magistrate of the *Kreis* court.

(4) Where there is a mediation board common to several municipalities, the mediator shall be elected on the joint nomination of the councils of the several municipalities by the people's representatives of the municipality in which the board is situated.

#### *Article 4*

##### CONDITIONS OF ELECTION

(1) Any citizen of the German Democratic Republic may be elected to the office of mediator provided that he is entitled to vote, has completed his twenty-third year and is prepared to accept this honorary office.

(2) To be elected mediator, a citizen must enjoy the confidence of the people and have the character and political outlook required to discharge properly the functions of mediator.

#### *Article 5*

##### DISMISSAL OF THE MEDIATOR

If an unsuitable person has been elected to the office of mediator, or should it later transpire that he is unsuited for, or incapable of discharging, the duties of mediator, the people's representatives may dismiss him on the proposal of the judicial authorities.

#### *Article 11*

##### INCOMPETENCY AND CHALLENGE OF THE MEDIATOR

(1) The mediator shall not be competent to act:

(a) In disputes to which he himself is a party;

(b) In disputes involving his spouse or his brothers or sisters;

(c) In disputes involving a person with whom he is related directly or by adoption;

(d) In disputes in which he is or was entitled to participate as the legal representative of one party.

(2) A mediator may be challenged on grounds of possible prejudice if reasonable doubt exists regarding his impartiality. The mediator must be challenged before the mediation procedure begins. If the mediator proceeds with the attempt to reconcile the parties despite being challenged, the party concerned may submit a complaint within one week to the judicial authorities, who shall give a definitive ruling on the complaint within one week.

(3) In such cases, the mediator shall refer the parties to the competent mediation board as defined in article 7.

<sup>1</sup> *Gesetzblatt*, p. 555. Text kindly furnished by the Ministry of Foreign Affairs of the German Democratic Republic. Translation by the United Nations Secretariat.

*Article 16*

## MEDIATION PROCEDURE

(1) If both parties appear within the prescribed time-limit, an attempt shall be made to reconcile them.

(2) The mediator shall ensure that the subject of the dispute is thoroughly discussed by the parties. During the discussion, the parties shall be heard and informal testimony may be given, without an oath being taken, by voluntary witnesses in order to clarify the subject

of the dispute. The mediator shall make appropriate proposals for an amicable settlement. No agreement may be entered into for payment of a fine.

(3) If the complainant has made reconciliation conditional upon a special declaration (public apology) by the accused, the attempt at mediation shall be deemed to have failed, if the declaration is not made within a reasonable period to be determined by the mediator.

(4) The minutes relating to a mediation case shall be signed by the mediator and the parties.

## REGULATION ON THE EQUAL RIGHTS OF WOMEN IN THE LAW OF NATIONALITY

of 30 August 1954<sup>1</sup>

*Art. 1.* An alien or stateless woman does not acquire German nationality by marriage to a German national.

*Art. 2.* (1) A German woman does not lose her German nationality by marriage to an alien or stateless person.

(2) German nationality shall be granted upon request to former German nationals who, in conformity

with article 17, paragraph 6, of the German Nationality Act of 22 July 1913, have become stateless by marriage after the coming into force of the Constitution of the German Democratic Republic and who have not yet acquired another nationality.

*Art. 3.* Children one of whose parents is a German national are German nationals. If a child possesses multiple nationality as a result of the national law of the other parent, it shall be determined in subsequent legislation under what conditions the child may opt for either nationality.

<sup>1</sup> *Zentralblatt*, p. 431. Text kindly furnished by the Ministry of Foreign Affairs of the German Democratic Republic. Translation by the United Nations Secretariat.

# FEDERAL REPUBLIC OF GERMANY

## THE PROTECTION OF HUMAN RIGHTS IN 1954<sup>1</sup>

### A SURVEY OF INTERNATIONAL AGREEMENTS, FEDERAL AND LAND LEGISLATION AND JUDICIAL DECISIONS

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#### I. INTERNATIONAL AGREEMENTS

##### 1. POLITICAL AGREEMENTS TO RE-DEFINE THE INTERNATIONAL STATUS OF THE FEDERAL REPUBLIC OF GERMANY<sup>2</sup>

(a) Agreements for the restoration of German sovereignty were concluded in 1952 between the three Powers, France, the United Kingdom and the United

States of America, and the Federal Republic. Some account has already been given (see *Yearbook on Human Rights for 1952*, p. 83 *et seq.*) of the significance of these treaties, signed at Bonn and Paris on 26 and 27 May 1952, for the development of universal human rights. Under the Constitution of the Federal Republic, the treaties required the approval of Parliament before they could be ratified. The Act of approval was passed,

<sup>1</sup> Report prepared by Mr. Karl Doehring, lawyer, Referent at the Max Planck Institute for Foreign Public Law and International Law, Heidelberg, Government-appointed correspondent of the *Yearbook on Human Rights*. Translation by the United Nations Secretariat.

#### ABBREVIATIONS

BGBI	<i>Bundesgesetzblatt</i>
BGHSt	<i>Entscheidungen des Bundesgerichtshofs in Strafsachen</i> (Criminal Law Decisions of the Federal Court of Justice)
BGHZ	<i>Entscheidungen des Bundesgerichtshofs in Zivilsachen</i> (Civil Law Decisions of the Federal Court of Justice)
BVerfGE	<i>Entscheidungen des Bundesverfassungsgerichts</i> (Decisions of the Federal Constitutional Court)

BVerwGE	<i>Entscheidungen des Bundesverwaltungsgerichts</i> (Decisions of the Federal Administrative Court)
DÖV	<i>Die Öffentliche Verwaltung</i> (Public Administration)
DVBl	<i>Deutsches Verwaltungsblatt</i> (German Journal of Administration)
GBI	<i>Gesetzblatt (der Länder)</i> (Journal of Laws [of the Länder])
GVBl	<i>Gesetz- und Verordnungsblatt (der Länder)</i> (Journal of Laws and Orders [of the Länder])
MDR	<i>Monatsschrift für deutsches Recht</i>
NJW	<i>Neue Juristische Wochenschrift</i>
VWRspr	<i>Verwaltungsrechtsprechung in Deutschland</i> (Administrative Jurisprudence in Germany) (published by G. Ziegler)

<sup>2</sup> The Federal Republic of Germany is hereinafter referred to as "the Federal Republic".

after thorough discussion in Parliament, on 28 March 1954 (*BGBI* 1954, II, p. 57). The European Defence Community Treaty was also approved by Parliament at the same time. As far as Germany was concerned, no further obstacle to the ratification of these treaties then remained.

(b) As these 1952 treaties, especially the European Defence Community Treaty, subsequently failed to secure international agreement, other arrangements were needed to settle the new status of the Federal Republic. On 23 October 1954, the Powers concerned signed a Protocol on the Termination of the Occupation Regime in Western Germany. The German Parliament approved the Protocol by an Act of 24 March 1955 (*BGBI* 1955, II, p. 213). This agreement confirmed the 1952 treaty between the three Powers and the Federal Republic, with certain changes. It was also agreed in Paris on 23 October 1954 that the Federal Republic should accede to the Brussels treaty of 17 March 1948 and to the North Atlantic Treaty. Certain changes had to be made in these treaties before the Federal Republic could accede to them. In the Brussels treaty, the contracting Powers, now including the Federal Republic, undertook to protect human rights in general and, in particular, to preserve the principles of democracy, personal freedom and political liberty. The North Atlantic Treaty involves a similar undertaking. The Parliament of the Federal Republic approved the accession by an Act of 24 March 1955 (*BGBI* 1955, II, p. 256).

A further agreement, designed to dispose of the controversial issue of the future status of the Saar, was reached by France and the Federal Republic on 23 October 1954. The two Powers undertook to hold a referendum of the Saar population on the question of the Europeanization of the Saar.<sup>1</sup> This agreement was also approved by an Act of the Federal Parliament on 24 March 1955 (*BGBI* 1955, II, p. 295).

## 2. THE EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, OF 4 NOVEMBER 1950

The Government of the Federal Republic announced on 15 December 1953 (*BGBI* 1954, II, p. 14) that the European Convention on Human Rights<sup>2</sup> had come into force in the Federal Republic and a number of other States on 3 September 1953, in accordance with article 66(2) of the Convention. The announcement drew attention to the German reservation with regard to article 7(2) of the Convention, which was held to conflict with article 103(2) of the Basic Law<sup>3</sup> (for further details, see the *Yearbook on Human Rights for 1952*, p. 84). The Federal Government also announced that the effect of the Convention extended to West Berlin, and that its conclusion did not imply any recognition of the present status of the Saar Territory.

<sup>1</sup> Extracts from the Agreement appear on p. 401, below.

<sup>2</sup> See *Yearbook on Human Rights for 1950*, pp. 418-426.

<sup>3</sup> See *Yearbook on Human Rights for 1949*, p. 82.

## 3. OTHER EUROPEAN CONVENTIONS

(a) By a treaty of 21 December 1954, the United Kingdom defined its relationship with the European Coal and Steel Community. This agreement received parliamentary approval in the Federal Republic in an Act of 23 August 1955 (*BGBI* 1955, II, p. 837). For the significance of the Coal and Steel Community for the development of human rights, reference should be made to the report for the Federal Republic in 1952 (*Yearbook on Human Rights for 1952*, p. 84).

(b) A measure designed to promote better mutual understanding among the peoples of Europe is the European Cultural Convention, signed in Paris on 19 December 1954 (Federal Government announcement—*BGBI* 1955, II, p. 1128). One of the main features of this convention is that it facilitates the freedom of movement on European territory of the nationals of States members of the Council of Europe.

## 4. THE CONVENTION RELATING TO THE STATUS OF REFUGEES, OF 28 JULY 1951

The Government of the Federal Republic announced on 25 May 1954 (*BGBI* 1954, II, p. 619) that this convention had come into force with effect from 22 April 1954 in the Federal Republic and a number of other States (Australia, Belgium, Denmark, Luxembourg and Norway).

The significance of the Convention for the Federal Republic has already been noted on pages 107-108 of *Yearbook on Human Rights for 1953*. Since the obligation under international law to observe the Convention became effective in respect of the Federal Republic in 1954, a very brief reminder of its terms would be in order.<sup>4</sup> The Convention refers to the Universal Declaration of Human Rights of 10 December 1948 and to the principles evolved by the United Nations with regard to the treatment of refugees. It points out that, because the grant of asylum may place heavy burdens on individual States, international co-operation appears to be required. A very precise definition is given of the term "refugee" as used in the Convention. Thus a refugee must be living outside the country of his nationality, and a person may not be recognized as a refugee if he has committed a crime against peace, a war crime, a crime against humanity or a serious non-political crime. A refugee is required, in accordance with the ordinary rules of international law relating to aliens, to conform to the laws of the country in which he finds himself. On the other hand, he may not be subjected, on the grounds of race, religion or origin, to treatment less favourable than that required by the rules of international law relating to aliens. This minimum standard of rights is to be granted even if there is no guarantee of reciprocity *vis-à-vis* the country of origin. In the event of exceptional measures being taken against the refugee's country of nationality, such

<sup>4</sup> The text of the Convention appears in *Yearbook on Human Rights for 1951*, pp. 581-588.



measures may not be applied to the refugee himself. He is entitled, to the same extent as any other alien, to acquire property, to have access to the courts of law in the country of refuge and to the same treatment with respect to public relief as is accorded to the country's own nationals. His social security status must also be comparable to that of the nationals of the country. The recognized basic right of every State to expel individuals or refuse them entry must not be used against a refugee if this involves returning him to the State which threatens his safety.

## 5. HUMANITARIAN AGREEMENTS

### (a) *The Geneva Red Cross Conventions of 12 August 1949*

By an Act of 21 August 1954 (BGBl 1954, II, p. 781), the Parliament of the Federal Republic approved the accession of the Federal Republic to the four Geneva Conventions<sup>1</sup>—namely, the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, the Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, the Geneva Convention relative to the Treatment of Prisoners of War, and the Geneva Convention relative to the Protection of Civilian Persons in Time of War. Of special interest are the provisions forbidding any differential treatment of the persons concerned on grounds of race, religion and sex. Inhuman treatment of any kind, such as murder, torture, mutilation or the taking of hostages, is also proscribed. In specific circumstances, regular judicial proceedings must be instituted. Detailed provisions are laid down for health safeguards. Treatment of prisoners of war must include proper arrangements for accommodation, rations, clothing, medical attention, spiritual care, mail, machinery for complaints, and repatriation according to a plan based on the urgency of their case. The Convention relative to the Protection of Civilian Persons contains detailed provisions to protect the population from hardship arising out of certain consequences of war.

The Federal Government announced on 4 November 1954 (BGBl 1954, II, p. 1133) that the four Geneva Conventions would come into force in the Federal Republic on 3 March 1955.

### (b) *Convention on the Prevention and Punishment of the Crime of Genocide*

Parliamentary approval was given by the Bundestag in an Act of 9 August 1954 (BGBl 1954, II, p. 729). Since the parties to the Convention undertake to make provision in their national legislation for penalties for the acts enumerated as punishable in the Convention, an amendment to the German criminal law was required. The text of the German legislation is reproduced below.<sup>2</sup>

<sup>1</sup> See *Yearbook on Human Rights for 1949*, pp. 299–309.

<sup>2</sup> See p. 116.

The Federal Government announced on 14 March 1955 (BGBl 1955, II, p. 210) that the Convention had come into force in the Federal Republic on 22 February 1955, the instrument of accession having been deposited with the Secretary-General of the United Nations on 24 November 1954.

### (c) *International Slavery Convention of 25 September 1926*

An agreement was made with a number of States regarding the reciprocal revalidation of the Convention.<sup>3</sup>

The Federal Government announced on 29 January 1955 (BGBl 1955, II, p. 98) that the Convention was again applicable in respect of Australia as from 1 July 1954 and in respect of Denmark, Finland, Iraq, Lebanon, Norway, Syria and the Union of South Africa as from 1 January 1955. The Convention was also revalidated as regards Austria as from 1 January 1955 (Government announcement of 29 January 1955—BGBl 1955, II, p. 187).

### (d) *Extradition Treaties and the Right of Asylum*

An extradition treaty between the German Reich and Finland had existed since 14 May 1937, but had never been applied, because of the war. By a Federal Government announcement of 30 October 1954 (BGBl 1954, II, p. 1050) the treaty was revalidated with effect from 1 July 1954. For present purposes, its provisions are of interest only in that, like most extradition treaties, it stipulates that the parties are not obliged to extradite political offenders. Purely military offences are also an exception to the obligation to extradite. As announced by the Federal Government on 18 March 1955 (BGBl 1955, II, p. 596), the extradition treaty of 9 March 1876 between Germany and Luxembourg was also revalidated with effect from 1 January 1954. In this case, too, extradition for political offences is excluded.

## 6. INTERNATIONAL LABOUR CONVENTIONS

(a) On 15 April 1954, Parliament gave its legal sanction to the accession of the Federal Republic to Convention No. 63, concerning Statistics of Wages and Hours of Work in the Principal Mining and Manufacturing Industries, including Building and Construction, and in Agriculture (BGBl 1954, II, p. 437). This agreement provides for the compilation of statistics on average earnings, hours actually worked, time rates of wages and normal working hours; but States are not bound to publish information relating to any individual undertaking. According to the Federal Government announcement of 24 September 1955 (BGBl 1955, II, p. 907), the ratification was registered on 22 June 1954. The Convention came into force on 22 June 1955.

(b) The Federal Republic's accession to the Convention concerning the Organisation of the Em-

<sup>3</sup> See *Yearbook on Human Rights for 1953*, p. 108.

ployment Service, of 9 July 1948, was approved by an Act of 15 April 1954 (*BGBI* 1954, II, p. 448). This provides that each member shall maintain a free public employment service, establish a system of employment offices and in so doing pursue the objective of full employment.

(c) The accession to the Convention concerning Fee-charging Employment Agencies, of 1 July 1949, was also approved by an Act of 15 April 1954 (*BGBI* 1954, II, p. 456). The Convention provides that employment agencies conducted with a view to profit shall be progressively abolished, and that supervision shall be established over employment agencies of all kinds. The Federal Government announced on 10 October 1955 (*BGBI* 1955, II, p. 906) that the ratification had been registered on 8 September 1954.

(d) A Federal Government announcement of 27 June 1955 (*BGBI* 1955, II, p. 820) stated that the ratification of the accession to the Convention concerning Minimum Wage-fixing Machinery in Agriculture of 28 June 1951 had been registered on 25 February 1954.

(e) The Federal Republic's accession to the Convention concerning the Employment of Women on Underground Work in Mines of all Kinds, of 21 June 1953, received legal sanction on 10 June 1954 (*BGBI* 1954, II, p. 624). The prohibition of the employment of women underground permits exceptions only in the case of females holding positions of management, employed in health and welfare services or undergoing practical training in the course of their studies.

(f) Parliamentary approval of the Convention concerning Holidays with Pay in Agriculture, of 26 June 1952, was given by an Act of 21 August 1954 (*BGBI* 1954, II, p. 1005).

## 7. AGREEMENTS ON SOCIAL SECURITY

(a) Two international treaties on reciprocal unemployment insurance were signed in 1954 by the Federal Republic. One was concluded with the Netherlands on 29 October 1954, and approved by the Federal Parliament by an Act of 31 October 1955 (*BGBI* 1955, II, p. 909). It provides that the relevant legislation of each of the two States shall apply to the nationals of the other.

An unemployment insurance treaty was signed with Italy on 5 May 1953 and given parliamentary approval by an Act of 28 April 1954 (*BGBI* 1954, II, p. 485); it came into force on 1 December 1954, according to a Federal Government announcement of 20 January 1955 (*BGBI* 1955, II, p. 87).

(b) Arrangements were made with Denmark and Austria for the reciprocal application of national social insurance legislation to their nationals.

The agreement with Denmark was signed on 14 August 1953 and the Bundestag approved it on 21 August 1954 (*BGBI* 1954, II, p. 753). It is applicable

to the existing regulations on sickness, accident, old-age, disability and similar insurance. According to a Federal Government announcement of 14 July 1955 (*BGBI* 1955, II, p. 763), the instruments of ratification were exchanged on 28 September 1954, and the agreement came into force on 1 November 1954.

The agreement with Austria was signed on 11 July 1953 and received parliamentary approval in an Act of 21 August 1954 (*BGBI* 1954, II, p. 773). The agreement consists essentially of technical amendments to an earlier treaty. The instruments of ratification were exchanged on 29 September 1954, and the agreement came into force with effect from 1 January 1953 (Federal Government announcement of 29 March 1955—*BGBI* 1955, II, p. 606).

(c) On 15 December 1953, a treaty was signed between the Swiss Confederation and the Federal Republic providing for the indefinite extension of the Agreement on Assistance to the Needy, of 14 July 1952. The treaty may be denounced in any year. The Bundestag approved the treaty by an Act of 12 August 1954 (*BGBI* 1954, II, p. 779) and the Federal Government announced on 15 November 1954 (*BGBI* 1954, II, p. 1206) that it had come into force as from 3 November 1954.

(d) An Agreement concerning the Social Security of Rhine Boatmen was signed in Paris on 27 July 1950. The conference leading up to this agreement was convened by the International Labour Office. The Federal Republic of Germany, Belgium, the United States of America, France, the Netherlands, the United Kingdom of Great Britain and Northern Ireland, Switzerland, the United Nations and the Central Commission for Rhine Navigation took part in the conference, and the contracting parties are the Federal Republic, Belgium, France, the Netherlands, the United Kingdom and Switzerland. The agreement provides for social security in case of employment injury, sickness, maternity and the like. The Federal Government announced on 6 April 1954 that the agreement had come into force as from 1 June 1953 (*BGBI* 1954, II, p. 524).

## 8. TREATIES FOR THE RESTORATION OF INDUSTRIAL, LITERARY AND ARTISTIC PROPERTY RIGHTS

(a) An agreement was concluded on 22 March 1954 between the Federal Republic and the Republic of Cuba for the restoration of industrial property rights and the protection of marks of origin. The Bundestag approved the Agreement by an Act of 10 December 1954 (*BGBI* 1954, II, p. 1112) and the Federal Government announced on 24 December 1954 that it would come into force on 20 January 1955 (*BGBI* 1955, II, p. 4).

(b) Another agreement concerning certain rights in the field of industrial property and copyright was concluded with the Federal People's Republic of Yugoslavia on 21 July 1954 and received the approval

of Parliament on 2 February 1955 (*BGBI* 1955, II, p. 89).

(c) A treaty on the protection of copyright in musical works was concluded between the Federal Republic and Mexico on 4 November 1954. Parliamentary approval was given by an Act of 27 October 1955 (*BGBI* 1955, II, p. 903).

(d) A treaty for the protection of industrial property rights impaired by the Second World War was concluded between the Federal Republic and Japan on 8 May 1953. It was approved by the German Parliament on 18 May 1954 (*BGBI* 1954, II, p. 525), and the Federal Government announced on 9 July 1954 that it had come into force on 3 July 1954 (*BGBI* 1954, II, p. 728).

(e) The restoration of industrial property rights and copyright affected by the Second World War was settled by treaty between the Federal Republic and the United States of Brazil on 4 September 1954. Parliament approved this treaty by an Act of 18 May 1954 (*BGBI* 1954, II, p. 533).

(f) An agreement on the reciprocal protection of industrial property rights between Germany and the United States has existed since 1909. It has now been revalidated by the declarations of 31 March and 16 April 1953 (Federal Government announcement of 5 January 1954, *BGBI* 1954, II, p. 13). There is a stipulation in the agreement that any rights acquired in the Federal Republic in the meantime by United States citizens shall not be prejudiced.

## 9. CERTAIN OTHER TREATIES

(a) An agreement made on 3 June 1953 provided for the revalidation of the Treaty of Friendship, Commerce and Consular Relations between Germany and the United States of America, of 8 December 1923. The agreement was approved by Parliament on 3 August 1954 (*BGBI* 1954, II, p. 721).

The Treaty contains a number of provisions of importance for the development of human and fundamental rights. Thus, the nationals of either party are allowed free access to the territory of the other, subject always to the national immigration regulations. Freedom of conscience and freedom of worship are guaranteed, as are the protection of their persons and property and freedom of access to courts of justice. Expropriation without compensation is forbidden. House-searches may be effected only to the extent that they are permissible in the case of nationals of the country of residence. Consular officials enjoy certain privileges and immunities in the performance of their duties and may make representations to the authorities of the country of residence in case of any encroachment upon the rights of their nationals.

The Federal Government announced on 20 November 1954 that the Treaty would come into force on 22 October 1955 (*BGBI* 1954, II, p. 1051).

(b) A series of agreements to regulate questions arising out of the transfer of sovereignty over North Schleswig to Denmark had been in force between the German Reich and Denmark since 1922. On 23 June 1954, the Federal Government announced that these agreements had been revalidated with effect from 1 December 1953 (*BGBI* 1954, II, p. 717).

Of the total of eighteen agreements, the following are of importance for the subjects under consideration: agreement No. 12, which provides that the social welfare of former recipients of military pensions shall be the responsibility of the Power taking over the territory in which such persons are resident; agreement No. 14, by which Denmark undertakes, in accordance with article 312 of the Treaty of Versailles, to perform the obligations arising from disability and widows' and orphans' insurances without regard to the nationality of the recipients. Arrangements are also made for accident, sickness and employee insurance, so that the individuals concerned will suffer no hardship.

(c) The Federal Government announced on 15 December 1954 that Swiss legislation now provided for reciprocity as required by German law with regard to compensation for wrongful arrest on suspicion (*BGBI* 1954, II, p. 1473).

By an Act of 25 December 1954, Parliament approved the accession of the Federal Republic to the Universal Postal Union (*BGBI* 1954, II, p. 1211). Article 1 of the Universal Postal Convention indicates that the promotion of international co-operation and the encouragement of the exchange of correspondence and freedom of information are among the principal aims of the Union.

(e) Two international sanitary conventions were revalidated as between the Federal Republic and Australia. The convention of 21 June 1926 (Federal Government announcement of 7 February 1955—*BGBI* 1955, II, p. 100), designed to combat epidemic diseases and entailing the obligation to notify the Office international d'Hygiène publique of their occurrence, was restored with effect from 1 July 1954. The second convention serves the same purpose in respect of the protection of health in air transport. The revalidation of this convention of 12 April 1933 was made effective as from 1 July 1954 (Federal Government announcement of 26 April 1955—*BGBI* 1955, II, p. 623).

## II. FEDERAL AND LAND LEGISLATION AND JUDICIAL DECISIONS

A detailed account of relevant legal developments during 1954, especially with regard to judicial decisions, would have taken up much more space than is available here. Hence, we have had to confine our attention to the most important and typical developments.

# 1. RIGHT TO THE FREE DEVELOPMENT OF PERSONALITY

## (a) *Inviolability of Human Dignity*

This principle, which is set forth in article 1 of the Basic Law,<sup>1</sup> is the ideal starting-point for fundamental rights in general. Although the principle is formulated in general terms, the decisions of the Federal Court of Justice show that it is directly applicable law. The Court recognized, for example, that personal papers of a confidential nature are entitled to the same kind of protection as copyright works. Positive law is silent on the subject; nevertheless, it was decided that such papers may be published only with the author's permission and only in a manner authorized by him. Hence the "unauthorized exposure of the personal privacy to which every individual is entitled" is inadmissible, except where there are cogent overriding reasons of public interest (25 May 1954—*BGHZ* 13, p. 334; 26 November 1954—*BGHZ* 15, p. 249).

The use of the "lie detector" (polygraph) by the police in criminal investigation was also held to be incompatible with human dignity. It was argued that the decisive factor was not the usefulness or otherwise of this device, but the fact that it was degrading to interfere with a person's freedom of decision in this manner. The accused in judicial proceedings was to be regarded as an interested party, not as the object of the proceedings (16 February 1954—*BGHSt* 5, p. 332).

## (b) *Freedom of Conscience and Religious Belief*

The Bavarian Education Act of 27 July 1948 provided that supervisors in communal schools should be elected from among members of the commune. The persons elected as supervisors in denominational schools were to belong to the corresponding denomination, and in the case of mixed schools the supervisors were to be eligible in proportion to the relative numbers of pupils of their respective denominations. The Bavarian Constitutional Court declared this Act to be unconstitutional. It was held that every citizen had the right to be elected to the school supervisory board as a representative of his commune, and that in accordance with article 107 of the Bavarian Constitution,<sup>2</sup> access to such honorary public office could not be made dependent on membership of a particular religious creed (25 June 1954—*VWRspr*, Vol. 7, p. 281).

## (c) *Right to Free Expression of Opinion*

The aspect of this question that most frequently came before the courts for decision was freedom to engage in political activity. Thus representatives of

the Communist Party had published in their information sheet a picture which was regarded as propaganda for the Communist World Festival. The newspaper was confiscated and the representatives claimed damages on the ground that this action was unlawful. The authorities maintained that the confiscation was lawful, citing article 18 of the Basic Law,<sup>3</sup> which states that the fundamental right of free expression of opinion is forfeited if it is abused to attack the libertarian democratic basic order. Since, however, such forfeiture must be pronounced by the Federal Constitutional Court, the Federal Court of Justice rejected the authorities' plea. It was held that the pronouncement by the Federal Constitutional Court was of the essence, and that an authority could not assume the forfeiture of fundamental rights in anticipation (1 February 1954—*VWRspr*, Vol. 6, p. 513). Nevertheless, the Court held that the confiscation was permissible on the grounds that the right to free expression of opinion was restricted by the general law and hence by the police regulations and that the right could be restricted where there might otherwise be a threat to public security and order and the principles of democracy. The propaganda for the Communist World Festival was held by the Court to be a disturbance in this sense.

In another case, a court decision was occasioned by the question whether employees—in the case in point, members of the Industrial Council—were at liberty to engage in party political activities. The provisions of German labour law permit the dismissal of members of the Industrial Council only in certain exceptional cases. The Federal Labour Court (3 December 1954—*NJW* 1955, p. 606) declared such dismissal to be permissible if a member of the Industrial Council carried on party political agitation which disturbed peaceful labour relations. It was true that everyone enjoyed the right to free expression of opinion, but that right might not be improperly used. Dismissal in such cases was not an inadmissible restriction of this fundamental right.

It was held that artistic freedom could not be restricted by the general police regulations. In the view of the Federal Administrative Court (21 December 1954—*BVerwGE*, Vol. 1, p. 303), the freedom of artists is abused when other fundamental rights or interests essential to the existence of the State community are prejudiced or threatened. A cinema film, however, could not be banned by the police merely because it offended the susceptibilities of a section of the population.

The importance of broadcasting in the formation and expression of public opinion was recognized in the Land of North Rhine-Westphalia by the Act of 25 May 1954. This Act requires the broadcasting station to present its broadcasts in an objective manner.

The Land government retains the ultimate right of supervision, but a Broadcasting Council consisting of twenty-one members elected by the Landtag was

<sup>1</sup> Wherever the term "Basic Law" is used in the following pages, the reference is to the 1949 Constitution of the Federal Republic of Germany. Extracts therefrom appear in *Yearbook on Human Rights for 1949*, pp. 79–84.

<sup>2</sup> Quoted in *Yearbook on Human Rights for 1946*, p. 120.

<sup>3</sup> Quoted in *Yearbook on Human Rights for 1949*, p. 81.

established for the everyday supervision of broadcasting.

(d) *Right to Free Choice of Occupation*

Article 12 of the Basic Law<sup>1</sup> secures to everyone the right to choose his trade or profession, though the exercise of such occupation may be subjected to legislative restrictions. It has repeatedly been a matter for debate whether a particular regulation governing the exercise of an occupation did not in the final analysis entail a restriction on the free choice of occupation. A few firm principles have gradually been formulated by judicial decisions. Thus, the Higher Administrative Court at Münster (6 May 1954, *NJW* 1954, p. 1621) ruled that the right of free choice of occupation could definitely not be claimed if the existence of a higher interest essential to the community was thereby threatened. The Federal Administrative Court took the same view (14 December 1954, *NJW* 1955, p. 763). It disagreed with the Münster Higher Administrative Court, however, in that it did not concede that the exercise of the occupation of innkeeper could be restricted on the grounds that there was no public demand for the establishment of another inn. The question of a permit for a passenger transport undertaking was decided in similar fashion. A clause in the Act governing the authorization procedure provided that the applicant had no absolute claim to authorization even if none of the grounds for refusal enumerated in the Act applied to him. In other words, authorization was at the discretion of the licensing authority, except where the Act made refusal mandatory. The Federal Administrative Court declared this clause to be unconstitutional, since it was not compatible with the fundamental right to free choice of occupation (29 June 1954, *BVerwGE*, Vol. 1, p. 169). If no lawful grounds for refusal were applicable, the applicant was entitled to the authorization, and the licensing authority had no power of discretion in the matter.

Admission to professions which involve danger to the community if improperly exercised is regarded by jurisprudence as entirely subject to control. The law provides that permission to exercise the profession of legal counsel may be refused if the applicant is not sufficiently reliable or not sufficiently qualified. The question arose whether this provision was in conflict with the fundamental right of free choice of profession. The Supreme Land Court of Bavaria (24 November 1954, *DVB* 1955, p. 194) ruled that it was not. In itself it did not imply any unconstitutional restriction. The exercise of this particular profession involved some danger to the community, so that control appeared to be both permissible and necessary.

## 2. PROTECTION AGAINST DISCRIMINATION

This is in practice probably the most important fundamental right; it has repeatedly given rise to complaints before the courts and to action challenging the constitutionality of legislation.

(a) *Equality before the Law in General*

It was argued before the Higher Land Court of Hamburg (1 September 1954, *NJW* 1954, p. 1737) that the principle of equality before the law was violated where two persons who had committed a criminal act in concert were given sentences of differing severity. The Court rejected this view, contending that one of the principal factors in determining a sentence was the personality of the offender. A difference in the severity of the penalties was not arbitrary if it was based on a difference in the personalities of the offenders.

A case under procedural law also occasioned an examination of the scope of the principle of equality. In a constitutional case brought before the Federal Constitutional Court, it was pleaded that the principle of equality had been infringed inasmuch as a court in a judgement on appeal had reversed its own ruling given at the first-instance hearing. A court normally regarded itself as bound in such cases by its first decision. The case was dismissed (1 July 1954, *BVerfGE*, Vol. 4, p. 1). It was held that even if the principle that a court is bound by its own decisions had been erroneously disregarded in this case, there was no infringement of the principle of equality. The review of judicial decisions regarding procedure in constitutional cases could not be extended to all procedural flaws, but was confined to violations of constitutional law. A court decision violated the Constitution only if it arbitrarily infringed the principle of equality, but not merely because there were errors in the application of the law or in the procedure adopted. The Constitution was violated only when such a judgement could not be understood in the light of an intelligent appreciation of the thought underlying the Basic Law and when it was clearly based on considerations not material to the issue.

The fact that the Federal Republic has the political structure of a federal State has raised the question whether the principle of equality is infringed by differences in the rights granted by the various Land legislatures. Thus, a repatriated war veteran claimed from the authorities of the Land in which he was resident certain facilities to which he would have been entitled in another Land. The Federal Administrative Court, however, rejected his claim to that effect on grounds of principle (19 November 1954, *BVerwGE*, Vol. 1, p. 242).

Laws which are quite clearly not intended to apply generally, but are basically intended to refer to one particular case only, have been held by judicial decisions to be unconstitutional on various grounds, including infringement of the principle of equality. This view was taken by the Bonn district court (10 November 1954—*NJW* 1954, p. 1898) with reference to a clause in the Exemption from Penalties Act, 1954, which waived the penalties in respect of information

<sup>1</sup> Quoted in *Yearbook on Human Rights for 1949*, p. 80.

supplied by public service employees before a certain date. The court took the view that this clause had been adopted for the purposes of one specific case (the Platow affair).

In principle, aliens are also entitled to the right to equal treatment. Hence, it had to be decided whether the Aliens Order of 22 August 1938, whereby an alien may be refused a residence permit, was reconcilable with the Basic Law. The Higher Administrative Court of Rhineland-Palatinate (9 November 1954—*VWRspr*, Vol. 7, p. 842) held that refusal to grant a residence permit was at any rate admissible when it was not done arbitrarily, and further, that the fundamental right of freedom of movement and residence applied only to Germans.

(b) *Equality of the Sexes*

Since the Basic Law<sup>1</sup> provides that all legislation which conflicts with the principle of equal rights for men and women must be repealed with effect from 1953, a spate of disputes had to be dealt with by the courts, especially in 1954. Even in 1953, a decision with the force of law taken by the Federal Constitutional Court (18 December 1953—*BGBI* 1954, I, p. 10) specified that all provisions of the law which conflicted with that principle were *ipso facto* superseded. From then on, each court had to make its own decision as to whether an earlier provision conflicted with the Basic Law. This was held by many to be irreconcilable with the principle of the certainty of the law.

Certain provisions of labour law, *inter alia*, gave rise to uncertainty. It was argued, for example, that different working hours for men and women infringed the principle of equality. The Higher Land Court of Hamburg (24 March 1954, *NJW* 1954, p. 1298) did not share this view. It held that a distinction made in view of the natural inequality of men and women was not arbitrary, whereas strictly equal treatment would amount to injustice. The Federal Labour Court (14 July 1954—*NJW* 1954, p. 1301) made a similar decision. The provision that an employed housewife should be entitled to one day off a month so that she could attend to necessary housework was not unconstitutional, and this right, which was based on practical considerations, must also be accorded to single women.

The principle of equal rights for men and women has had a special impact on family law. Previously, when a difference of opinion arose between parents in a matter affecting their children, the husband had the final say if no agreement could be reached. The Higher Land Court of Frankfurt declared this unconstitutional (19 March 1954—*NJW* 1954, p. 839). If no agreement could be reached, only the Wardship Court could decide, though the latter could declare binding only one of the two arrangements proposed by the parents,

not a third arrangement of its own. Again, the husband alone had previously determined the child's place of residence, a rule which the Bavarian Supreme Land Court ceased to recognize (9 November 1954—*NJW* 1955, p. 222). In this case too, the final decision in disputed cases is to be made by the Wardship Court. The Lüneburg district court reached a decision on the same lines with regard to the naming of children (25 May 1954—*MDR* 1954, p. 483).

Under criminal law also, despite the maintenance of equality in principle, inherent differences must be taken into account. The Federal Court of Justice declared certain statutory provisions by which penalties were laid down only for acts committed by men to be fully reconcilable with the Constitution (29 April 1954, *BGHSt*, Vol. 6, p. 167).

### 3. PROTECTION OF PERSONAL FREEDOM

(a) *Legislation governing the Powers of the Police*

Several Länder have found it necessary to provide a new statutory basis for the powers of the police. The main objective of the Acts is to define the police officer's power to intervene in the sphere of personal rights in such a way as to satisfy the requirements of fundamental and human rights. The principal point is that the means of enforcement available to the police should never be employed to a greater extent than is necessary and sufficient to ensure the preservation of public order and security and to cope with emergencies. Any measure which is not kept within these limits must be avoided.

On 26 March 1954, the Land of Rhineland-Palatinate passed an Act to that effect (*GVBl* 1954, p. 31). It limits the police's power of arrest; in particular, arrested persons may not be treated like sentenced prisoners. Unless the court orders otherwise, the arrested person must be released by the end of the following day. The police may force an entrance into dwellings only in case of serious emergency. The regulations for house-searches and impounding of articles of property are exhaustively formulated. In all circumstances, the means of enforcement adopted must be such as to cause the least possible inconvenience to the individual and the community.

In Bavaria too, the duties and powers of the police were laid down afresh in an Act of 16 October 1954 (*GVBl* 1954, p. 237). The Act emphasizes that the duties of the police include not only the protection of public security and public order, but also the protection of the Constitution and fundamental rights. Detailed rules are laid down for the performance of police duties, the procedure in case of arrest, confiscations, house-searches and the like.

In Hesse, the new Police Act of 10 November 1954 (*GVBl* 1954, p. 203) introduces no particular innovations as compared with the Prussian Police Administration Act of 1931 previously in force. As in the Acts mentioned above, detailed regulations governing

<sup>1</sup> Article 117 (1), quoted in *Yearbook on Human Rights for 1949*, p. 83.



the power of encroachment upon personal rights are laid down.

In Bremen, an Act of 19 February 1954 (*GBI* 1954, p. 25) governs the use of direct force by the police. In this case too, the main idea is that the police may not infringe the fundamental right of physical inviolability except to the smallest possible extent, and have power to do so only where there is no other way of dealing with the emergency.

#### (b) *Judicial Protection*

The provisions of article 104 of the Basic Law<sup>1</sup> guarantee the protection of personal freedom against infringement by the State, detailed regulations being left for later legislation. Nevertheless, the Bavarian Administrative Court (6 August 1954, *DVB* 1954, p. 810) took the view that this provision of the Basic Law is directly applicable law and that an individual may claim this fundamental right even though the detailed regulations have not yet been laid down. This point was disputed for a long time.

Personal freedom may be taken away only "on the basis of a formal law".<sup>2</sup> The Federal Court of Justice had to decide whether an order dating from 1938 on safeguards against communicable diseases answered this requirement—i.e., could form a legal basis for deprivation of liberty. The Court decided that it could not (14 October 1954—*BGHZ*, Vol. 15, p. 61), and that there would have to be a formal law in this sense enacted under the legislative procedure laid down in the Basic Law, since this was the only guarantee that arbitrary deprivation of liberty was as far as possible prevented. Even an order made in virtue of powers conferred by a formal law did not satisfy the requirements. The Bavarian Administrative Court (6 August 1954—*GVB* 1954, p. 810) and the Bavarian Supreme Land Court (11 August 1954—*VWRspr*, Vol. 7, p. 695) had previously taken quite a different view—namely, that if the order was made under powers conferred by formal law, it constituted a sufficient legal basis.

In the view of the Hamburg district court (6 March 1954—*MDR* 1954, p. 308), a court having to decide whether deprivation of liberty by the authorities is admissible may not confine itself to a single instance but is under a duty to determine at reasonable intervals whether deprivation of liberty continues to be essential. Furthermore the authorities must release the arrested person of its own account if the reasons for which the restriction of liberty was ordered have ceased to apply. The issue before the district court was the admissibility of committing a person to a mental health institution.

A criminal court may order a convicted person to be committed to a mental health institution on account of his mental condition; it may also order him to be

placed under direct police supervision for some time after he has served his sentence. The question whether one of these measures, and if so which, should be ordered must, in the view of the Federal Court of Justice (11 February 1954—*NJW* 1954, p. 968), not merely be made dependent on the question of public safety; the offender's personality as a whole and the different objectives and methods of treatment involved in these measures must be borne in mind. The importance attached by the Court to the protection of public safety is, however, brought out in a later judgement (28 September 1954—*NJW* 1954, p. 1734). Even if the offence against the law is relatively slight, an order for committal to a mental health institution may be issued, where there is a danger that further serious offences may otherwise be committed.

Another question to be decided was whether, under the judicial procedure for deprivation of liberty, the arrested person was himself to be considered fit to plead—i.e., to appear before the court and make his submissions, despite his apparent mental illness. The Federal Administrative Court declared that even the mentally ill were to be considered fit to plead in proceedings affecting the restriction of their liberty, since otherwise the outcome of the proceedings would be prejudiced in a way which could not be permitted (12 November 1954—*VWRspr*, Vol. 7, p. 919). In the view of the Stuttgart Administrative Court (17 March 1954, *VWRspr*, Vol. 6, p. 842), the order in which arrest by the authority and judicial hearing take place is of no particular importance, in the case of deprivation of liberty by the police. According to this view, the police are at liberty either to carry out the arrest and then obtain judicial authority or to secure judicial approval before making the arrest. The competent court for this procedure is in every case the administrative court. The Münster Higher Administrative Court had previously taken the same position on this question (15 January 1954, *VWRspr*, Vol. 6, p. 725), holding that, for other purposes too, the supervision of measures taken by the police was a matter not for the ordinary courts, but for the administrative court. The Bavarian Administrative Court (6 August 1954—*DVB* 1954, p. 810) decided otherwise, holding that any locally competent court could issue the authorization. Another point arising out of the decision of the Münster Higher Administrative Court (15 January 1954—*VWRspr*, Vol. 6, p. 725) was that in some circumstances judicial protection could be exercised twice over. The decision made it clear that the court did not itself order the deprivation of liberty, but merely approved the acts of the authorities. Hence, a complaint to the administrative court would still be admissible even after deprivation of liberty had been judicially authorized.

The right to protection against deprivation of liberty was also invoked against the acts of parents and guardians towards their children and wards. The Cologne district court rejected this, however. In the final analysis, it held, the Basic Law had in mind only

<sup>1</sup> Quoted in *Tearbook on Human Rights for 1949*, pp. 82–83.

<sup>2</sup> Article 104 (1) of the Basic Law.

deprivation of liberty by the State and did not pretend to regulate matters concerning the law of the family or of wardship (10 March 1954—*MDR* 1954, p. 418). Needless to say, this does not mean that abuse of parental or tutelary authority may not be alleged before the court on other than constitutional grounds.

#### 4. PROTECTION OF PRIVATE PROPERTY

The Basic Law<sup>1</sup> does not permit expropriation without compensation. On the other hand, certain limitations of property rights which uniformly affect all persons concerned cannot be regarded as expropriations in respect of which compensation must be paid. The boundary-line between these two provisions has been the subject of numerous judicial decisions involving the constitutionality of legislation.

##### (a) *Legislation and Private Property*

The Constitution of Hesse of 1 December 1946<sup>2</sup> is the only Land constitution which provides for the transfer of important economic undertakings (such as mines, iron and steel plants, power and transport) to public ownership. Provision for the detailed implementation of this socialization was to be made by a separate Act. This Act was passed in 1954 (6 July 1954, *GVBl* 1954, p. 126) after a considerable period of doubt as to whether this provision of the Hessian Constitution was consistent with the property guarantee of the Basic Law. A decision of the State Court of Hesse found in the affirmative. The Act regulates the process of transfer in detail and provides for the payment of appropriate compensation—in principle in cash—to those affected.

Under a Federal Act, the Investment Assistance Act, the manufacturing industries were required to pay a tax for the benefit of the basic industries (coal, iron and electric power) on the ground that the latter had for a long time been prevented by price controls from taking advantage of favourable economic conditions. It was argued before the Federal Constitutional Court that this Act was, *inter alia*, an uncompensated and therefore unconstitutional encroachment on private property. The Court rejected this view (20 July 1954, *BVerfGE*, Vol. 4, p. 7). It was held that the Basic Law did not protect property from state interference in the form of taxation. Only an economic position not protected by the Basic Law, not the intrinsic content of ownership, was affected. Nor was there infringement of the right to free development of the personality for the individual must accept restrictions if the legislator does not go beyond the reasonable requirements of the general welfare. The Court also held that the right to equality of treatment had not been impaired for the discretionary powers of the legislator had not been

abused inasmuch as the question was solely one of the expediency of an economic measure taken by the State.

In the Federal Republic, as in many other States, legislative action has been taken to further land reform and to provide land for resettlement. The constitutionality of legislation of this kind has been frequently challenged. Thus the Federal Administrative Court had to decide whether the Act passed in 1946 in the Land of Baden-Württemberg to provide land for settlement was consistent with the Basic Law. The Act provides that land may be requisitioned and title to it transferred to new settlers. As the Act provides that suitable compensation shall be paid, the Court raised no objection to it, holding that it furthered the general welfare and was a permissible measure to provide refugees from the east with a new basis for existence (20 May 1954, *NJW* 1954, p. 1342).

The Federal Constitutional Court was also called upon to decide on the permissibility of a redistribution of landed property. Consolidation is undertaken to bring small, separate land holdings together into larger, continuous holdings. Each land-owner is left with the same amount of land as he had before. The object is to halt the fragmentation of holdings which frequently results from the operation of the laws of inheritance. As this measure merely exchanges property rights and in no way alters their extent, and as the economic interests of the individuals concerned are themselves promoted inasmuch as the cultivation of the land is made easier, the Court had no hesitation in declaring the measure to be constitutional (9 November 1954, *VWRspr*, Vol. 7, p. 865).

In the Land of North Rhine-Westphalia, owners of forest properties were required by law to carry out measures of afforestation. The Münster Higher Administrative Court held that this requirement involved no unpermissible, uncompensated interference with private property (21 January 1954, *MDR* 1954, p. 763). The great importance of forests for the general welfare justified the imposition on property owners of the duty of maintaining the forests. Nor was the right to equal treatment impaired, as all owners of forest properties were equally affected.

##### (b) *Encroachment by the Authorities*

Police measures may also under certain circumstances create grounds for governmental compensation, if they impair property rights, particularly if the individual whose property rights the authorities have impaired in order to avert a public danger is not himself responsible for the existence of the danger. The Federal Court of Justice declined, however, to award the individual concerned more than the actual value of the property in question as compensation. The fact that the claimant might have secured a large profit from the property at some future date was not a relevant consideration in determining the amount of compensation (30 September 1954, *BGHZ*, Vol. 13, p. 363).

<sup>1</sup> Article 14 (3), quoted in *Yearbook on Human Rights for 1949*, p. 81.

<sup>2</sup> Article 41, quoted in *Yearbook on Human Rights for 1946*, pp. 126–127.



As a result of the war, the authorities had to assume responsibility for the allocation of accommodation. In the process of finding accommodation for homeless persons private property was of course requisitioned. Although as a general rule rent was paid by the tenants assigned by the authorities, in some cases they were later unable to pay. The Federal Court of Justice ruled that in such cases the authorities were not liable for the loss of rent if the tenant was able and willing to pay at the time of his assignment to the dwelling (11 February 1954, *VWRspr.*, Vol. 6, p. 586).

The authorities were also responsible for finding accommodation for refugees, which necessitated the requisitioning of private dwellings. As this was the responsibility of the communes, and the refugees were not at first in a position to pay rent, the Federal Court of Justice ruled that the commune administrations were responsible for the payment of compensation, as the housing of the refugees was to the advantage of the communes themselves (1 June 1954, *VWRspr.*, Vol. 7, p. 73). However, the Land authorities also had to pay compensation, as it was their duty also to provide housing, and it was thus to their advantage that the allocation of accommodation should be effected without friction (Federal Court of Justice, 10 June 1954 *VWRspr.*, Vol. 7, p. 61).

New building plans had to be made for the reconstruction of devastated towns. In order to permit the proper execution of these plans, the building authorities were empowered to prohibit building by private owners of building sites until the plans were completed. The Federal Court of Justice held that such a prohibition was an infringement of property rights in respect of which compensation should be paid, as the property owner who was prevented from using his site for a period of time was making a special sacrifice for the community (26 November 1954, *BGHZ*, Vol. 15, p. 268).

The amount of compensation to be paid is frequently uncertain. In disputed cases it is to be determined by the courts. The Federal Court of Justice held that the maximum or minimum prices for commercial purposes fixed in some cases by the authorities are not binding on the courts in determining the amount of compensation. The judgement of the price authorities is rather to be considered merely as an expert opinion (4 June 1954, *VWRspr.*, Vol. 7, p. 89).

##### 5. GUARANTEE OF COMPREHENSIVE PROTECTION OF RIGHTS UNDER CONSTITUTIONAL LAW

The Basic Law<sup>1</sup> provides that any person whose rights are infringed by public authority shall have recourse to the courts. Many decisions are concerned with the scope of this guarantee of due process of law.

<sup>1</sup> Article 19 (4), quoted in *Tearbook on Human Rights for 1949*, p. 81.

##### (a) Procedural Law

The constitutionality of the medical professional tribunal established in Lower Saxony was called in question in the Federal Constitutional Court. The Court rejected this contention (21 October 1954, *BVerfGE*, Vol. 4, p. 74). The fact that the proceedings were not public was unobjectionable in this case. Even in regular court proceedings the public may be excluded under certain conditions. In such cases, danger to the public arises primarily in criminal proceedings.

The question was raised whether the constitutional right to due process of law required that every court decision should be subject to review by a higher court. The Federal Administrative Court held that one reviewing authority can be regarded as sufficient (12 January 1954, *NJW* 1954, p. 1014; 2 April 1954, *NJW* 1954, p. 1172). The Land Schleswig-Holstein Act of 27 August 1951 on the limitation of appeals and complaints in administrative disputes was therefore held to be constitutional. The Federal Constitutional Court concurred in this opinion (21 October 1954, *BVerfGE*, Vol. 4, p. 74). The Württemberg-Baden Supreme Administrative Court was faced with a more difficult decision. The Land Constitution expressly provides that appeal shall lie from the decisions of an administrative court to a higher administrative court. However, as under the rules of the administrative courts the highest Land administrative court is required to rule on ministerial orders, it was conceivable that such ministerial orders would be subject to judicial review by only one body; the highest German administrative court, the Federal Administrative Court, applies federal law, not Land law, and so does not function as a court of second instance in all cases. It was therefore questionable whether the Württemberg-Baden Constitution was compatible with the existing rules of the administrative courts (17 May 1954, *DVBZ* 1954, p. 467). No final decision on this question was reached in 1954.

Under the Bavarian Act of 1948 on the jurisdiction of the Finance Court, the assessors of the Court were to be appointed for a fixed term, but provision was made for the removal of a member before the end of his term. The Bavarian Constitutional Court held that this provision was unconstitutional (26 November 1954, *VWRspr.*, Vol. 7, p. 156) on the ground that it did not guarantee the independence of the judiciary. It was a violation of constitutional principles for the Executive to have the power to remove members of a court from office at any time. The removal of a judge was permissible only on exceptionally serious grounds; a general authorization to do so was contrary to the Constitution.

Individuals should have an opportunity to state their cases to the administrative authorities, as well as to the courts. If an administrative decision is made without giving the citizen concerned a prior legal hearing, the decision, the Federal Court of Justice held,

is to be regarded as null and void only if, in consequence of the denial of this right, it results in manifestly arbitrary action and is inconsistent with the principles of good administration. It is subject to judicial review in all cases (14 May 1954, *VWRspr*, Vol. 6, p. 796).

Not every error in judicial procedure, the Federal Constitutional Court held, provides sufficient ground for an appeal on constitutional grounds against the decision rendered (26 February 1954, *BVerfGE*, Vol. 3, p. 359). The Federal Finance Court, the highest finance court of the Federal Republic, quashed the decision of a lower finance court, which had found in favour of the party concerned, on the basis of new, hitherto unknown facts. Under the rules of the courts it is the duty of the lower courts to establish the facts, so that the Federal Finance Court could have returned the case to the lower court for re-trial. The party concerned therefore argued that he had been unconstitutionally treated, since the Basic Law<sup>1</sup> provides that no one may be removed from the jurisdiction of his lawful judge. The Federal Constitutional Court rejected this plea. A procedural error such as that committed in this case did not in itself constitute a violation of the Constitution. In another case, the Federal Finance Court deliberately disregarded the principle that the establishment of the facts is a matter for the lower courts exclusively. The tax legislation provides that any person receiving a demand for payment from the finance authorities may appeal to the higher finance authorities and can appeal from the decision of the highest finance authority to the highest finance court. As, however, the latter is concerned only with questions of law, and cannot consider questions of fact, it was held to be not only permissible, but legally necessary, to recognize the right of the highest court, as an exception, to consider matters of fact, as otherwise no comprehensive judicial review would be possible (Federal Finance Court, 25 November 1954, *NJW* 1955, p. 967).

The tax legislation provides that if a penalty is imposed by the finance authorities, an appeal may be made to the courts or to the higher administrative authorities. If the second course is adopted the matter can no longer be brought before the courts. However, as the Basic Law requires judicial protection against any infringement of rights by the State, the Federal Finance Court decided that despite the specific regulation to the contrary, recourse to the courts must be available even after administrative decision of the appeal (7 April 1954, *NJW* 1954, p. 1422).

The principle that the authority making a decision shall not also decide appeals from that decision is generally recognized. The Federal Constitutional Court held, however, that this procedure was not necessarily unconstitutional (29 April 1954, *BVerfGE*,

Vol. 3, p. 377). The Court held that the principle that no one can be the judge of his own cause is indeed one of the principles of a constitutional State, but applies without qualification only to genuinely judicial matters. In administration, lower authorities are in any case required to follow the interpretation of their superior authorities, so that it is quite possible that the higher authorities who decide appeals have already determined the first decision made by the lower authorities.

The Constitution of Baden-Württemberg provides for the establishment of a state of justice. The court has now been established by the Act of 13 December 1954 (*GBI* 1954, p. 171), in implementation of this provision. Its functions include the determination of the constitutionality of legislation, the adjudication of disputes between the highest Land organs, motions for the disqualification of representatives, and complaints concerning violation of the law by Ministers, and the determination of the admissibility of constitutional amendments.

#### (b) *Retroactivity of Laws*

The question whether retroactive legislation is consistent with the principles of a constitutional State has always been doubtful and disputed. In criminal law, retroactivity is expressly prohibited by the Constitution.<sup>2</sup> The State Court of Justice of Hesse has more than once been required to rule on the legality of retroactive provisions in non-criminal legislation. The Court held that there is no supra-statutory rule which prohibits such retroactivity in general (5 March 1954, *VWRspr*, Vol. 6, p. 422; cf. also Federal Constitutional Court, *BVerfGE*, Vol. 2, p. 237). The Court declared, however, that retroactivity is inadmissible when it impairs the principle of a constitutional state that the law must be certain. Whether this is the case can be determined only in specific instances, and not in the abstract. It is even conceivable that retroactivity of legislation may be necessary in order to uphold the certainty of the law (cf. State Court of Justice, 19 February 1954, *DÖV* 1954, p. 312).

#### (c) *Protection of Rights under Criminal Law*

The fact that owing to economic distress and unsettled conditions illegal acts were committed during the post-war period which would hardly have occurred under normal circumstances was taken into account in a comprehensive Amnesty Act (Act of 17 July 1954, *BGBI* 1954, I, p. 203). This Act makes provision for the remission of penalties and the quashing of penal proceedings, especially in cases where the illegal acts were committed out of necessity. It applies also to tax offences, inter-zonal dealings, misrepresentation of civil status, and similar offences.

The Basic Law<sup>3</sup> expressly provides that no one may

<sup>1</sup> Article 101 (1), quoted in *Yearbook on Human Rights for 1949*, p. 82.

<sup>2</sup> Article 103 (2) of the Basic Law, quoted in *Yearbook on Human Rights for 1949*, p. 82.

<sup>3</sup> Article 103 (3), quoted in *Yearbook on Human Rights for 1949*, p. 82.

be punished for the same act more than once. The German code of criminal procedure takes this principle into account, since it permits no more than one indictment on the same grounds. The Federal Court of Justice was called on to decide whether it was permissible to prosecute a person who had already been convicted by an Occupation court for the same offence (21 May 1954, *BGHSt.*, Vol. 6, p. 176). The Court ruled that the principle applied only to the judgements of German courts. The fact that sentence had been passed by an Occupation court could not prevent a German court from re-trying an individual for the same offence. However, the penalty imposed by the Occupation court was to be deducted from any penalty imposed by the German court.

In Baden-Württemberg, new regulations concerning the right of pardon (18 June 1954, *GBI* 1954, p. 81) were drawn up on the order of the Minister President. The right was conferred upon the head of the Ministry concerned and thus primarily upon the Minister of Justice.

(d) *Protection of the Rights of Aliens.*

The extent of the comprehensive legal protection to be afforded to aliens was the subject of many judicial decisions. According to the police ordinance concerning aliens of 22 August 1938, which is still in force, aliens have no right of sojourn in German territory. This ordinance further provides that the individual concerned cannot claim judicial protection against a denial of the right of sojourn. The Münster Higher Administrative Court held this denial of judicial recourse to be unconstitutional (13 April 1954, *NJW* 1954, p. 1821) since the Basic Law<sup>1</sup> provides that legal recourse shall be available against every order of the State authority and this fundamental right applies also to aliens. Although an alien cannot claim the right to be in national territory, he may lodge a complaint if he is unreasonably denied permission to do so.

Under German criminal law a sentence may be suspended and the offender placed on probation. The Federal Court of Justice has ruled that this provision may be applied to an alien convicted in Germany, even if his domicile is in a foreign country (14 May 1954, *NJW* 1954, p. 1087).

Under the provisions in force concerning the liability of the German State for the unlawful acts of officials, an alien can only assert his claim if the State of which he is a national has assumed the same obligations in relation to German nationals in accordance with the principle of reciprocity. The Federal Court of Justice rejected the view that this provision was a violation of the fundamental rights guaranteed by the Constitution, and declared the existing regulations to be valid (10 May 1954, *NJW* 1954, p. 1283).

## 6. POLITICAL PARTIES AND THE RIGHT OF SUFFRAGE

### (a) *Legislation on the Right of Suffrage*

The regulations governing elections to the Landtag have been revised in several Länder. In North Rhine-Westphalia the previous election act was amended by the Act of 23 March 1954 (*GBI* 1954, p. 83). This Act provides that half the representatives shall be elected directly and the other half from the party lists. Lists of candidates may be presented only by political parties, not by independent candidates. In the election of candidates by proportional representation from the electoral lists no account will be taken of parties which receive less than 5 per cent of the total votes cast, from which no candidate is directly elected or which do not receive at least one-third of the votes cast in an election district.

The new Electoral Act of Lower Saxony (30 November 1954, *GBI* 1954, p. 143) also amends the regulations previously in force. It combines the direct election of individual candidates with proportional representation and provides for proportional representation in the case of parties only, not of independent candidates. It does not contain a clause to bar small parties. However, new parties desiring admission to an election must be able to present 100 signatures from an election district. The new Land Electoral Act of Hesse of 15 July 1954 (*GVBl* p. 129) also provides that half the representatives shall be elected directly and half by proportional representation.

### (b) *Prohibition of Unconstitutional Parties and Associations*

In accordance with the Basic Law,<sup>2</sup> authority to prohibit political parties because of unconstitutional activities is vested exclusively in the Federal Constitutional Court. However, the Higher Land Court of Cologne held (22 January 1954, *NJW* 1954, p. 973) that where an individual is accused of treasonous activities, a lower court is not barred from establishing that the party to which the accused belongs has acted unconstitutionally. The actions of the accused cannot be appraised without an investigation of the goals of his party. The Federal Constitutional Court is not forestalled thereby.

An attempt to prepare the violent overthrow of the fundamental democratic order is punishable under a recent criminal statute. The Federal Court of Justice held (6 May 1954, *BGHSt.*, Vol. 6, p. 336) that the question whether the party to which the accused belongs has been prohibited by the Federal Constitutional Court as unconstitutional is immaterial. The criminal court is free to weigh the facts of the case. The Court expressed the same opinion in a subsequent decision (19 May 1954, *BGHSt.*, Vol. 6, p. 172).

When the Federal Constitutional Court prohibited the Sozialistische Reichspartei the Land Ministers of

<sup>1</sup> Article 19(4), quoted in *Yearbook on Human Rights for 1949*, p. 81.

<sup>2</sup> Article 21(2), quoted in *Yearbook on Human Rights for 1949*, p. 81.

the Interior were charged with the duty of preventing the activities of successor or substitute organizations. However, the Lüneburg Higher Administrative Court held (27 August 1954, *DVBl* 1954, p. 719) that it was not permissible to search the homes of persons belonging to any existing political party in an attempt to discover such substitute organizations. Nor are such measures permissible where there is reason to suspect that the supporters of the prohibited party have gathered in the existing political party.

The distribution of literature directed against the Constitution is also punishable under German law. Here, however, the Federal Court of Justice took the position that if the distributor merely distributes the literature of a party which has not yet been prohibited by the Federal Constitutional Court he is not liable to penalty (13 October 1954, *BGHSt*, Vol. 6, p. 318).

Under the Basic Law,<sup>1</sup> even an association which is not a political party may be prohibited by judicial decision if its activities constitute a threat to the State. The Federal Administrative Court thus prohibited the Kommunistische Freie Deutsche Jugend (Communist Free German Youth), and held that in so doing it was not encroaching upon the exclusive competence of the Federal Constitutional Court to prohibit political parties (16 July 1954, *NJW* 1954, p. 1947). In another decision the Court ruled that even if an association constituting an alleged threat to the State has already been dissolved prior to the judicial proceedings it may appear as a party in the proceedings in which its constitutionality is to be decided (14 December 1954, *VWRspr*, Vol. 8, p. 17).

#### (c) *Authorization of Parties and Electoral Nominations*

According to a decision of the Lüneburg Higher Administrative Court (8 October 1954, *DVBl* 1954, p. 749) no person who is simultaneously a member of two political parties may offer himself for election as the candidate of one of those parties. Although this is not expressly prohibited by statute, the Court held that the voter casts his vote for the party and its programme as well as for the individual. The voter must have an assurance that the candidate represents only one political tendency, if the foundations of democracy are not to be endangered.

The party which represents the interests of the Danish inhabitants of Schleswig, and thus of a national minority, claimed a right to special treatment with respect to the right to participate in the Landtag elections. The party argued that it would be unjust to apply the same principles to it as were applied to other parties. Thus the provision that a party which did not receive at least 5 per cent of the valid votes cast in the Land election should not be taken into consideration, should not apply to it. The Federal Constitutional Court rejected this contention (11

August 1954, *BVerfGE*, Vol. 4, p. 31). The Court held that while the party might reasonably have been granted a special position, there was no statutory obligation to do so. The fact that the party represented a national minority distinguished it from other parties, but that did not mean that it was unconditionally entitled to special privileges in the Landtag elections. The fact that it was placed on exactly the same footing as other parties was sufficient.

The Federal Constitutional Court held that political parties, even if they are without legal capacity, may assert their right to an equal opportunity with respect to admission to a Landtag election by means of an appeal on constitutional grounds (3 June 1954, *BVerfGE*, Vol. 3, p. 383). On the other hand, freedom to found a political party does not imply that it would be impermissible to make admission to elections conditional on the prior submission of a party's statutes and programme and the existence of a democratically elected executive.

### 7. SOCIAL ASSISTANCE

#### (a) *Public Assistance in General*

The conditions and procedures governing public assistance were revised by an Order of the Federal Minister of the Interior of 12 April 1954 (*BGBI* 1954, I, p. 94).

Public assistance is more than an act of benevolence by the State; a legal claim to it exists. The Federal Administrative Court held that the earlier doctrine that assistance was given only in the interests of public order is no longer tenable, since it is inconsistent with the Basic Law (24 June 1954, *VWRspr*, Vol. 7, p. 748). It is the general meaning of the Constitution, considered as a social code, that the individual is indeed subject to public authority; but he is not merely a subject, he is also a citizen—that is, a participant in the power of the State. This is in keeping also with the protective dignity of man.

In principle, anyone who claims public assistance must also accept employment offered him by the authorities, if he does not wish to forfeit his claim to assistance. The Münster Higher Administrative Court therefore rejected an appeal for continued public assistance made by a writer who had refused non-independent work offered him by the Labour Office. The Court ruled that even an intellectual worker must be expected to comply with the rule if no other employment opportunity is open. This does not constitute an infringement of the fundamental right to the free development of personality (28 September 1954, *VWRspr*, Vol. 7, p. 747). The Lüneburg Higher Administrative Court took essentially the same position. However, it added that non-independent work need not necessarily be accepted if it seems likely that the intellectual worker will be able to resume his former independent profession in

<sup>1</sup> Article 9(2), quoted in *Tearbook on Human Rights for 1949*, p. 80.

the immediate future. The principle of individual assistance should not be disregarded (21 April 1954, *VWRspr*, Vol. 7, p. 1000).

(b) *Indemnification of Victims of National Socialist Persecution*

The first order implementing the federal Act providing for the indemnification of victims of the National Socialist regime was issued on 17 September 1954 (*BGBI*, 1954, I, p. 271). The order defines the categories of persons to be indemnified; these categories include widows, children and grandchildren. In order to make it easier for claimants to assert their claims, the original connexion between the injury and persecution need not be proved but only established as probable. A further Order was issued on 24 December 1954 (*BGBI*, 1954, I, p. 510).

(c) *Assistance to Repatriates and Ex-prisoners of War*

Regulations for the compensation of German ex-prisoners of war were established by the Federal Act of 30 January 1954 (*BGBI*, 1954, I, p. 5). All prisoners of war who returned to Germany after 31 December 1946 are entitled to monetary compensation for each day's imprisonment after that date. Persons convicted in German courts of crimes committed against other prisoners while prisoners of war receive no compensation. In order to implement this Act, regulations were also required in the Länder. They were issued in 1954, and lay down the procedure for the payment of compensation and for appeals against decisions by the authorities. Further provisions to assist repatriates to regain their health, if they are not entitled to statutory insurance or public assistance, were laid down in a Federal Order of 21 April 1954 (*BGBI* 1954, I, p. 117).

The Act of 19 June 1950 concerning the social treatment of repatriates provides that they may be granted certain economic advantages. These advantages are to be withheld in respect of the period of time during which the repatriate was himself responsible for his delay in returning to Germany. The Federal Administrative Court rules that individual responsibility within the meaning of this provision exists if the repatriate voluntarily did not return earlier because of unfavourable economic conditions in Germany (20 January 1954, *NJW* 1954, p. 717).

The Federal Act concerning the recognition of refugees lays down that the advantages it provides for shall be granted only if the refugee concerned was forced to flee by specially compelling circumstances. The Rhineland-Palatinate Higher Administrative Court ruled (27 April 1954, *DVB* 1954, p. 229) that such compelling circumstances may include circumstances of a wholly moral character, as in the case of an official who fled in order to avoid carrying out an official order the execution of which would have violated the fundamental principles of humanity.

## 8. PARENTAL RIGHTS

The Basic Law<sup>1</sup> states that the care and upbringing of children are the natural right of parents. The State watches over the performance of this duty by the parents.

Under the Bavarian Education Act children under six years of age are excluded from school attendance. The constitutionality of this Act was contested on the ground that under the Basic Law it rested with parents alone to decide at what age their children should attend school. The Bavarian Constitutional Court did not uphold this view (12 February 1954, *VWRspr*, Vol. 6, p. 641). The Court held that the right of parents to care for and bring up their children is indeed a fundamental and supra-statutory right, but in a modern civilization parents can no longer carry out their educational duties alone. The State must take a hand so that the children may be brought up to be worthy members of society. As all children are required to attend school, it can be assumed that the right to determine the age at which school attendance is compulsory is vested in the State. On the other hand, only parents have the right to decide on the form of schooling, the participation of their children in religious instruction, and similar matters.

In connexion with a difference of opinion between divorced parents on the school attendance of their child, the Federal Constitutional Court ruled that where parental authority is misused a guardian may be appointed to settle questions relating to a child's education.

## 9. RIGHT TO NATIONALITY AND PROTECTION OF NATIONALS

The Basic Law<sup>2</sup> provides that all Germans who were deprived of their citizenship during the National Socialist régime for political, racial or religious reasons shall be regranted German citizenship. The Federal Administrative Court ruled that this right applied to the former National Socialist Strasser. Strasser was a member of the National Socialist Party until 1930, but later opposed it, and was exiled when Hitler assumed power. After he left Germany he was deprived of German nationality. The Court ruled that Strasser could claim the right to be regranted citizenship under the Basic Law, since he had been deprived of it for political reasons (19 November 1954, *VWRspr*, Vol. 7, p. 785).

In principle, no one may be deprived of nationality except on the basis of a law. The Federal Administrative Court was called on to decide whether Austrians living in the Federal Republic still retained the German nationality which had been bestowed upon them in 1938. The Court decided in the affirmative

<sup>1</sup> Article 6(2), quoted in *Yearbook on Human Rights for 1949*, p. 80.

<sup>2</sup> Article 116(2), quoted in *Yearbook on Human Rights for 1949*, p. 83.

on the ground, *inter alia*, that no legislation depriving them of nationality had been enacted (30 October 1954, *NJW* 1955, p. 55). The Federal Constitutional Court subsequently gave a decision in the opposite sense.

The Basic Law<sup>1</sup> prohibits the extradition of a German to a foreign country. The Federal Court of Justice was called upon to consider the scope of this prohibition. A German national in a foreign country was serving a sentence imposed on him there. As he had also committed offences in the Federal Republic,

<sup>1</sup> Article 16 (2), quoted in *Yearbook on Human Rights for 1949*, p. 81.

the Federal Government requested his extradition. This was agreed to on condition that the offender should be returned as he had not completed his sentence. The question was whether the return of this German national to the foreign country was permissible under the Constitution. The Federal Court of Justice held that it was admissible (3 March 1954, *BGHSt.*, Vol. 5, p. 397), since it did not worsen the offender's situation. Under certain circumstances he might be punished in the foreign country, even if the foregoing were not the case for the offence he had committed in Germany. It was therefore in his own interest that a German court should be able to judge the act he had committed in Germany.

## ACT ON THE ACCESSION OF THE FEDERAL REPUBLIC OF GERMANY TO THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

of 9 August 1954<sup>1</sup>

*Art. 1.* The accession of the Federal Republic of Germany to the Convention on the Prevention and Punishment of the Crime of Genocide adopted by the General Assembly of the United Nations on 9 December 1948 is hereby approved.

*Art. 2.* The following provisions shall be inserted after article 220 of the Criminal Code:

"Art. 220 (a) 1. Any person who, with intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such, deliberately

1. Kills members of the group;
  2. Causes serious bodily or mental harm to members of the group, particularly of the kind specified in section 224;
  3. Inflicts on the group conditions of life calculated to bring about its physical destruction in whole or in part;
  4. Imposes measures intended to prevent births within the group;
  5. Forcibly transfers children of the group to another group
- shall be punishable by penal servitude for life for the crime of genocide.

"2. In the cases referred to in paragraph 1, subparagraphs 2 to 5, the sentence of penal servitude shall, if there are extenuating circumstances, be for a term of not less than five years."

*Art. 3.* Article 134 of the Judicial Organization Act shall be amended as follows:

(a) The following words shall be added to paragraph 1:

"And in the case of genocide in accordance with article 220 (a) of the Criminal Code",

(b) In paragraph 1, after the words "article 105 of the Criminal Code" the word "and" shall be replaced by a comma.

*Art. 4.* Article 3 of the German Extradition Act shall not apply to extradition for an act punishable under article 2 of this Act.

*Art. 5.* 1. The Convention is hereby published with the force of law.

2. The day on which the Convention enters into force for the Federal Republic of Germany as provided under article XIII, third paragraph of the Convention, shall be announced in the *Bundesgesetzblatt*.

<sup>1</sup> Published in *Bundesgesetzblatt*, Part II, of 12 August 1954, p. 729. Translation by the United Nations Secretariat.



## GREECE

### LEGISLATION

#### LEGISLATIVE DECREE No. 2951 TO RESTORE PROPERTY CONFISCATED UNDER DECREE No. 40 OF THE FOURTH BOARD OF REVIEW

of 10 August 1954<sup>1</sup>

*Art. 1* (1). If a Greek national convicted of assisting the guerrilla movement in any way has been acquitted or released as a result of judicial proceedings, his property confiscated under article 1(1)(b) of decree No. 40 shall be returned to him.

(2). The restoration of such confiscated property shall be effected by order of the court of first instance

<sup>1</sup> Greek text in *Official Gazette* No. 181, of 1954, received through the courtesy of the Permanent Mission of Greece to the United Nations. Translation by the United Nations Secretariat.

which ordered the confiscation, which shall be governed by the procedure applicable to petitions. The right to apply for the restoration aforesaid shall vest in the person in respect of whom the confiscation was ordered and those heirs designated as statutory by article 1825 of the Civil Code, in the order of their succession, and must be exercised, if at all, within six months from the date of publication of this legislative decree.

...

#### LEGISLATIVE DECREE No. 3094 TO ESTABLISH MEASURES TO COMBAT ILLITERACY

of 6 October 1954

##### SUMMARY<sup>1</sup>

The legislative decree provides for the establishment of a central committee to combat illiteracy, composed of religious and educational authorities, representatives of the ministries and other public officials and representatives of various private organizations, including the press. The committee's functions are to supervise and co-ordinate the anti-illiteracy campaign throughout the country, direct the work of the provincial committees, draw up a programme of work each year, allocate state aid to local committees for educational programmes and night schools, and confer awards for outstanding service.

Provision is made for the establishment of a provincial committee in each province similar in composition to the central committee, whose functions are to establish and supervise the operation of night schools, assist the competent public authorities in promoting school attendance, administer a fund to provide assistance for needy pupils, ensure that a register of illiterates is kept, by commune, in each province, confer awards for outstanding service,

submit proposals to the central committee regarding the allocation of funds, and decide on the use of available funds, which may be derived from occasional state grants, truancy fines and contributions and gifts by church organizations and private institutions and individuals.

Night schools consisting of from three to six grades are to be established in all parts of the country for the education of young persons of both sexes between fourteen and twenty years of age who are illiterate or who have not completed elementary school. Existing public or private school buildings designated by the competent provincial committee will be used for this purpose. Such night schools may be established for an enrolment of not fewer than ten pupils, and will be staffed and organized along the lines of ordinary public schools. Private night schools may also be established provided that they conform to the provisions of the decree. The curriculum will be identical to that of ordinary public schools, except in special circumstances.

Illiterate persons over twenty years of age who do not wish to attend the night schools established under the decree may enrol at the educational centres organized by the provincial committees, and employed children between twelve and fourteen years of age

<sup>1</sup> Summary by the United Nations Secretariat. The full Greek text appears in *Official Journal* No. 252, of 12 October 1954, received through the courtesy of the Permanent Mission of Greece to the United Nations.

may in exceptional cases attend night schools instead of day schools. Parents, guardians, and, for a period of five years from the date of entry into force of the decree, employers, who fail to register children of compulsory school age or fail to ensure their regular attendance are subject to penalties under the decree. Young persons over sixteen years of age may be sentenced to detention for a period not exceeding one month for wilful failure to attend public night school.

Eight years after the legislative decree comes into effect, persons under thirty years of age must have completed six years of public school in order to be eligible for government and similar posts requiring the ability to read and write. The same qualifications are prescribed for heads of mechanical, industrial and other undertakings, for the exercise of a profession and for employment as an apprentice or as a skilled workman.

## RATIFICATION OF INTERNATIONAL AGREEMENTS

Legislative decree No. 2965, of 10 August 1954 (*Official Gazette* No. 194, of 23 August 1954), ratified the protocol, approved by the General Assembly of the United Nations on 23 October 1953 and opened for signature or acceptance on 7 December 1953, amending the Geneva Convention on Slavery of 1926.<sup>1</sup>

Legislative Decree No. 3091, of 6 October 1954 (*Official Gazette* No. 250, of 12 October 1954) ratified the Convention on the Prevention and Punishment of the Crime of Genocide approved on 9 December 1948 by the United Nations General Assembly.<sup>2</sup>

<sup>1</sup> See *Tearbook on Human Rights for 1953*, pp. 345-346.

<sup>2</sup> See *Tearbook on Human Rights for 1948*, pp. 484-486.

## JUDICIAL DECISIONS

### DETERMINATION OF COMPENSATION FOR EXPROPRIATION OF PROPERTY—CONSTITUTION OF GREECE

#### *Supreme Court Decision No. 231/54 (Section I)*<sup>1</sup>

According to the provisions of article 17 of the Constitution of 1911, which was in force at the time of the publication of the royal decree expropriating the property in question and at the time of the final decision of the court of first instance fixing the specific amount to be paid as compensation, immovable property might be expropriated in the public interest, in the manner prescribed by law and subject in all cases to the payment of compensation in an amount determined by judicial decision. Correctly interpreted, this provision means that compensation must be in full. Compensation is again expressly required by article 17 of the Constitution of 1952, the correct construction to be placed on which is that the compensation must be such as to enable the owner of the expropriated immovable property to replace it by other property of equivalent value, and the Constitution does not empower the public legislator to enact legislation fixing compensation at less than full compensation in that sense. The adequacy of the amount of the compensation, in the sense of a payment of equivalent value to the owner, may be judged only

on the basis of the economic and monetary conditions prevailing at the time of the application requesting the president of the court of first instance to determine the amount of the compensation provisionally, and only the actual value of the expropriated property at that time fulfils the above-mentioned requirement of full compensation which would enable the owner of the expropriated property to acquire other property of equal value. Consequently, the provisions of article 9 of legislative decree No. 1731/1939, as amended by article 1 of legislative order No. 80/41 and article 19 of legislative order No. 1411/42, which were in force at the time of the notice of expropriation and at the time of the final order of the court of first instance fixing the final compensation for the expropriation, and which are also contained in article 9 of the royal decree of 29/30 April 1953 for the codification of certain provisions regarding expropriation, providing that the value of expropriated property and the compensation due for the expropriation thereof must be determined on the basis of the average market value of the property during the three-year period preceding the notice of expropriation, clearly conflict with the above-mentioned provisions of article 17 of the Constitution and are therefore without legal force, and their application is barred because they are superseded by the conflicting provisions of the Constitution, which have greater formal validity.

The Court of Appeal ruled, in its contested decision,

<sup>1</sup> *Archion Nomologias*, 1954, Vol V. Greek text received through the courtesy of the Permanent Mission of Greece to the United Nations. Translation by the United Nations Secretariat. For article 17 of the Constitution of Greece of 1911, referred to therein, see *Tearbook on Human Rights for 1946*, p. 133. For article 17 of the Constitution, which came into force on 1 January 1952, see *Tearbook on Human Rights for 1951*, p. 117.



that the provisions of article 9 of legislative decree No. 1731/1939 as amended by article 1 of legislative order No. 1411/42 and codified by article 9 of the above-mentioned royal decree of 29/30 April 1953, are unconstitutional and that their application is therefore barred, and determined the final compensation to be paid for the expropriated property in question on the

basis of its actual value at the time of the application requesting the president of the court of first instance to establish a provisional amount of compensation. In so doing, it correctly interpreted and applied the above-mentioned provisions of substantive law, and the sole argument for the motion to set the decision aside must be rejected as unfounded.

## PRIVATE INDIVIDUALS SUBJECT TO COURT MARTIAL JURISDICTION IN CASES OF OFFENCES AGAINST THE SECURITY OF THE ARMED FORCES—CONSTITUTION OF GREECE

### *Supreme Court Decision No. 67/1954 (Section II)*<sup>1</sup>

As stated in judgement No. 1756 B/1953 of the Permanent Court Martial of Athens, the appellant was found guilty of violating articles 2 and 5 of legislative decree No. 375/1936. That is (1) acting jointly with others he gathered and procured the secret military, political, economic and diplomatic information referred to in the judgement, relating to the nation's defence and external security and the security of its armed forces, which had not been entrusted to the offenders and which had not come to their knowledge officially or by reason of their occupation, work or assignment, and which they delivered and communicated within and outside Greece to unauthorized persons, and (2) using a pseudonym for the purpose of espionage he organized and used means of correspondence and communication—namely, clandestine wireless stations—by which information relating to the nation's defence and external security and the security of its armed forces was transmitted to fugitives from justice living abroad and through them to unauthorized persons. These offences are subject to the jurisdiction of courts martial irrespective of the status of the offenders, in accordance with the pro-

visions of article 14 of the above-mentioned legislative decree, which remains in force even after the entry into force of the Penal Code and the Code of Criminal Procedure, by virtue of the sole article of Act No. 1612/50, which is consonant with article 97 of the Constitution now in force, according to which private individuals, such as the appellant, are subject to the jurisdiction of courts martial of the Army, Navy or Air Force only in the case of offences against the security of the armed forces, inasmuch as the said acts relating to the nation's defence and external security are also unquestionably directed against the security of the armed forces which are responsible therefor.

Hence the first ground for the appeal, alleging the incompetence of the court that heard the case, must be rejected as unfounded.

<sup>1</sup> *Archion Nomologias*, 1954, Vol. V. Greek text received through the courtesy of the Permanent Mission of Greece to the United Nations. Translation by the United Nations Secretariat. For article 97 of the Constitution of Greece, quoted therein, see *Yearbook on Human Rights for 1951*, p. 118.

## PROHIBITION OF A MOVEMENT CALCULATED TO DISTURB RELATIONS BETWEEN GREECE AND FOREIGN COUNTRIES—LAW OF GREECE

### *Council of State Decision No. 2389/53 (Plenum)*<sup>1</sup>

The application, together with the motions, seeks an order setting aside the decision by which the Ministry of the Interior refused to grant a permit to the applicant, C. C., a national of the United States of America, on her application of 28 May 1953, to construct a building in Delphi at which to exhibit the works of foreign painters and to hold meetings for discussions concerning the world citizenship movement.

As the record of the case shows, the purpose of the aforesaid activities is to promote the so-called world citizenship movement, to which the applicant belongs, and to establish a symbolical edifice at Delphi to serve as a centre for the movement. The founding would be attended, among others, by the founder of the movement, H. S., a United Kingdom national, and other aliens coming for that purpose, who would make speeches, adopt a flag for the movement and so forth.

<sup>1</sup> *Archion Nomologias*, 1954, Vol. V. Greek text received through the courtesy of the Permanent Mission of Greece to the United Nations. Translation by the United Nations Secretariat.

The prohibition in Greece of this movement, which is alien in inspiration and origin and is designed to form a supra-national organization capable of exer-

cising international political influence, is clearly within the political authority of the Government, in view of the fact that, owing to its nature, the movement is composed of persons of various nationalities and might therefore in the course of its activities become a source of friction and a disturbing element in the relations between Greece and foreign countries. The

official act in question is therefore by its very nature an act of government in respect of which no application for review can be entertained, according to the provisions of article 46(c) of Act No. 3713, which exempts from such review government acts and orders that are within the scope of the exercise of political authority.

# GUATEMALA

## POLITICAL STATUTE OF THE REPUBLIC OF GUATEMALA<sup>1</sup> of 10 August 1954

### CHAPTER I

#### PUBLIC AUTHORITY

*Art. 1.* The Republic of Guatemala shall be governed in accordance with the basic provisions of this statute until the people, in the exercise of its sovereignty, elects a National Assembly and until the Constitution of the Republic is enacted.

...

*Art. 7.* The Republic of Guatemala will fulfil its international obligations; its actions will conform to the treaties, conventions and covenants which tend to consolidate a democracy based on absolute respect for the rights of the citizen; it will endeavour to give effect to the human rights set forth in the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10 December 1948, and affirms its intention of living together in dignity with the free nations of the world.

...

### CHAPTER II

#### NATIONALITY AND CITIZENSHIP

*Art. 9.*

...

The following persons shall be Guatemalan nationals by naturalization:

...

(c) An alien woman who is married to a Guatemalan national and who opts for her husband's nationality.

A person who is naturalized must expressly renounce every former nationality. A naturalization certificate may be revoked in the circumstances in which it becomes revocable in conformity with statute law or if its revocation becomes necessary by reason of some security measure.

<sup>1</sup> Spanish text in *El Guatemalteco* No. 142, of 12 August 1954, pp. 121-123, received through the courtesy of Mr. Domingo Goicolea Villacorta, Minister of Foreign Affairs. English translation from the Spanish text by the United Nations Secretariat. Article 44 repeals the Constitution of 11 March 1945 (see *Yearbook on Human Rights for 1946*, pp. 135-143) and all laws, legislative decrees and provisions inconsistent with the Political Statute. In conformity with article 45 the Political Statute came into force on the day of its publication in the Official Gazette.

*Art. 10.* All Guatemalan nationals of either sex who are over the age of eighteen years and able to read and write are citizens.

*Art. 11.* The rights and duties inherent in citizenship are to participate in elections, as elector or as candidate, and to accept public office. Persons who are unable to read and write shall be eligible for municipal office and for less responsible posts in the public service. Legislation will be enacted to regulate the exercise of the franchise.

*Art. 12.* No person may hold any office in the State or in a municipality, or in any subsidiary organ of the State or municipalities, unless he possesses the requisite capacity and integrity.

...

### CHAPTER III

#### INDIVIDUAL GUARANTEES

*Art. 15.* The Republic of Guatemala endorses the principles of resolution XXX of the IXth International Conference of American States, held at Bogotá, containing the American Declaration of the Rights and Duties of Man; and the Government Junta<sup>2</sup> desires that the said resolution shall be incorporated in the new Constitution of the Republic. Pending the attainment of this objective, the Junta hereby enacts the following guarantees:

(a) The life and physical integrity of the individual and his personality as a moral being endowed with intellect are the subject of special protection.

(b) Freedom of movement is assured. Every person shall be free to enter, remain in and leave the territory of the republic, except as otherwise provided by law.

(c) Every person shall be free to dispose of his goods in conformity with the law. The State reserves the right to impose limitations affecting the ownership of immovable property situated in an area extending fifteen kilometres inland from the sea coast or in a fifteen-kilometre belt along the land frontiers of the country and of immovable property situated on the banks of rivers and the shores of lakes, to the extent provided for by legislation. An order of expropriation shall not be made except in cases in which it is desirable or necessary in the public interest.

<sup>2</sup> Decree No. 64, of 1 September 1954, substituted "the President of the Republic" for "the Government Junta".

(d) The State shall be governed in all its actions by the principle that the property of the inhabitants should not suffer any prejudice whatsoever; the State shall not be answerable for prejudice occasioned by riot or by a disturbance of the public peace or by the measures taken to deal with the disturbances.

(e) Any religion may be freely practised.

(f) The right of assembly for lawful purposes, in a peaceful way and without arms, is recognized.

(g) The right of association is likewise guaranteed, subject to no limitations other than those prescribed by legislation. It is unlawful and a punishable offence to form or to conduct, in public or in private, a political organization which is international or foreign in character—in particular of any communist organization.

(h) Ideas may be freely expressed, without prior censorship, in speech, in writing or by any other means of publicity. If a person commits a crime or offence in the exercise of this right, he shall be tried by a jury composed in the manner prescribed by statute.

(i) The correspondence and private papers and books of every person shall be inviolable.

(j) The inviolability of the home is guaranteed. It shall not be permissible to force an entry into a home except by virtue of an order of the competent authority, made in conformity with the law, and in no case shall an entry be permissible between the hours of 6 p.m. and 6 a.m.

(k) A person shall not be detained except by virtue of an order given in writing by the competent authority by reason of some crime or offence, or as a

measure of security. This provision shall not, however, apply to the case of *flagrante delicto*.

(l) No person shall be compelled to testify in a criminal cause against himself, his spouse or his relatives within the fourth degree of consanguinity or within the second degree of affinity.

(m) No person shall be convicted unless he has first been summoned, received a hearing, and been found guilty by a court of justice.

*Art. 16.* The remedy of an application for *habeas corpus* or production of the person shall be the proper recourse in cases relating to the treatment of persons under detention or of prisoners. If an application for the said remedy is made to a court, the court shall confine itself to making an order for the production of the person under detention at a public hearing and, if it should appear that the detention is unlawful, to ordering his release. The court shall not have authority to order the release of a person who is subject to a security measure.

*Art. 17.* The proclamation of the rights and guarantees in the preceding articles does not exclude any other rights or guarantees which are not expressly referred to and which are inherent in the human person or derive from the democratic principles of government. The exercise of all the rights and the enjoyment of the individual guarantees shall not be subject to any limitations other than the security measures ordered by the Government Junta.<sup>1</sup>

<sup>1</sup> Decree No. 64, of 1 September 1954, substituted "the President of the Republic" for "the Government Junta".

## DECREE No. 48 of 10 August 1954<sup>1</sup>

*Art. 1.* The following organizations are hereby dissolved, as active participants in the communist front:

- (a) The General Confederation of Labour of Guatemala;
- (b) The National Peasant Confederation;
- (c) The Trade Union Federation of Guatemala;
- (d) The Railwaymen's Trade Union for Action and Betterment;<sup>2</sup>
- (e) The Union of Education Workers;
- (f) The United Fruit Company Workers' Union;<sup>2</sup>
- (g) The Agricultural Company of Guatemala Workers' Union;<sup>2</sup>

<sup>1</sup> Spanish text of decree No. 48 in *Decretos Emitidos desde el 3 de julio al 31 de diciembre 1954*, Guatemala, 1955, received through the courtesy of Mr. Domingo Goicolea Villacorta, Minister for Foreign Affairs. Translation by the United Nations Secretariat.

<sup>2</sup> The dissolution of this organization was revoked by decree No. 156.

- (h) The Democratic Youth Alliance;
- (i) The Guatemalan Women's Alliance;
- (j) The *Saker-Ti* Group;
- (k) The University Democratic Front (FUD);
- (l) The Guatemalan Labour Party (PGT);
- (m) The Party of the Guatemalan Revolution (PRG);
- (n) The Revolutionary Action Party (PAR);
- (o) The National Renovation Party (PRN); and
- (p) Any other political parties, groups or associations which followed the Arévalo-Arbentz line or were in the service of the communist cause.

*Art. 2.* The recognition as legal entities of all the associations, groups and political parties referred to in the previous article is hereby withdrawn; action to give effect to this provision shall be taken by the ministries concerned.

*Art. 3.* The assets and funds of the bodies specified in sub-paragraphs (k), (l), (m), (n), (o) and (p)

of article 1 of this decree shall be placed under the control of the Ministry of Internal Affairs; the assets and funds of the bodies referred to in the other subparagraphs of article 1 shall be placed under the control of the Ministry of Economic Affairs and Labour. Both Ministries shall proceed with the liquidation of the said bodies, the assets and cash funds of which shall remain deposited with the said Ministries.

*Art. 4.* The foundation of new political parties is prohibited, and all activities of the other political parties, whatever their ideology or aims, is temporarily suspended until such time as the Government Junta<sup>1</sup> orders the holding of elections to the Constituent Assembly. This suspension shall not apply to organ-

<sup>1</sup> Decree No. 64, of 1 September 1954, substituted "the President of the Republic" for "the Government Junta".

izations which have co-operated with the Government Junta in the eradication of communism from Guatemala.

*Art. 5.* Political parties not included in the provisions of article 1 of this decree shall make an inventory of their assets within a period of not more than five days and submit it to the Ministry of Internal Affairs. Their assets shall be placed in the custody of the competent treasurer or financial secretary, and their funds shall be deposited with the Bank of Guatemala to the order of the said treasurer or financial secretary, who shall alone have power to dispose of the funds, subject to the authorization of the Government.

*Art. 6.* The present decree is a security measure.

*Art. 7.* The present decree shall enter into force on the date of its publication in the *Diario Oficial*.

## LAW FOR THE PREVENTION AND PUNISHMENT OF COMMUNISM

Decree No. 59, of 24 August 1954<sup>1</sup>

### CHAPTER I

#### FUNDAMENTAL PROVISIONS

*Art. 1.* Communism, in all its forms, activities and manifestations, is hereby outlawed as being contrary to the traditional democratic institutions of Guatemala and the exigencies of its national life.

*Art. 2.* All communist activity is prohibited and shall be punished; in consequence, no group having communist aims or drawing inspiration from communist programmes and tendencies may be organized or function, whether openly or clandestinely.

*Art. 3.* The Committee of National Defence against Communism shall establish a register of all persons who have participated in any way whatsoever in communist activities.

*Art. 4.* The fact that a person's name is included in the register shall constitute a strong presumption that the person is dangerous.

*Art. 5.* The Government Junta<sup>1</sup> may at any time order a name to be removed from the register if it is found, upon examination of the facts, that it had been improperly entered therein, either wilfully or by mistake.

*Art. 6.* The names of the following shall be entered in the register:

<sup>1</sup> Spanish text of Decree No. 59 in *Decretos Emitidos desde el 3 de julio al 31 de diciembre 1954*, Guatemala, 1955, received through the courtesy of Mr. Domingo Goicolea Villacorta, Minister for Foreign Affairs. Translation by the United Nations Secretariat.

<sup>2</sup> Decree No. 64, of 1 September 1954, substituted "the President of the Republic" for "the Government Junta".

(a) Persons whose affiliations with the Communist Party are fully established;

(b) All persons who, as promoters, organizers or propagandists, contributed to, or participated in, the various groups or movements conducting communist propaganda and indoctrination, or served on their executive committees;

(c) All persons who organized or sponsored national or international conferences and meetings held in Guatemala at the instigation of the communist movement; and all persons who, in the exercise of public office, made premises in state buildings available for the holding of such conferences or meetings, or by attending them gave them official prestige;

(d) All members of groups ostensibly organized for the purpose of cultural or literary activities but in fact intended primarily to make an effective contribution to communist propaganda;

(e) All those who carried on communist propaganda through the press or radio, or in connexion with teaching activities.

*Art. 7.* Persons included in the register established in article 3 above may not hold public office or employment.

### CHAPTER II

#### PUNISHABLE ACTS

*Art. 8.* The following acts shall be punishable:

(a) The carrying or possession of firearms by any person whose name is included in the register referred to in article 3 of this law;

- (b) The possession, trade in, transport or acquisition of explosives without a licence issued by the Ministry of National Defence in accordance with the law;
- (c) The publication, printing, reproduction or distribution of handbills, pamphlets or other publications containing communist propaganda;
- (d) The possession of clandestine communist or subversive propaganda manifestly intended for distribution;
- (e) The act of concealing persons sought for communist activities, or providing them with means of escape;
- (f) Communist propaganda at public meetings or places of work;
- (g) The manufacture of explosives and devices of any type to detonate explosives;
- (h) Clandestine communist propaganda;
- (i) Terrorist outrages;
- (j) The act of sponsoring, provoking, spreading or encouraging illegal strikes in any way;
- (k) The traffic in books of communist propaganda intended to serve as textbooks in elementary or secondary schools;
- (l) Sabotage, consisting in damage to objects, installations or machinery pertaining to public services or to private or state undertakings, or any act calculated to lead to such damage;
- (m) The possession of radio broadcast or communications transmitters, without a licence issued after the entry into force of this law;
- (n) The manufacture, possession, trade in, or use of, communist emblems;
- (o) Acting as an agent for international communist organizations;
- (p) The possession, commerce in, or exhibition of films propagating communist views;
- (q) The clandestine possession of printing type, or of apparatus for printing or reproducing propaganda material, by persons included in the register established in article 3 above;
- (r) The provision of premises for communist meetings;
- (s) Activities tending to further the recovery, support or operation of the Communist Party, and activities having as their object the formation of groups similar to the Communist Party, or the indoctrination of supporters;
- (t) Membership in communist parties or any similar groups;
- (u) The act of organizing public meetings, or acts intended to provoke public meetings for the purposes of communist propaganda or agitation.

*Art. 9.* The penalties prescribed in this law shall apply only to the acts listed in article 8.

...

## CHAPTER IV PROCEDURE

*Art. 21.* The investigation, trial and judgement of cases instituted in respect of offences specified in this law shall be within the exclusive jurisdiction of the military courts.

*Art. 22.* When the penalty annexed to the offence is greater than three years' imprisonment, the case shall be dealt with by court martial in accordance with the provisions of title V, chapters I and II, of the Military Code, part II, and the other applicable provisions of the Military Code. In other cases, the procedure shall be in accordance with the provisions of title III of the Military Code.

*Art. 23.* Appeal shall lie only from the decision of the court of first instance. Appeal shall not lie to the Supreme Court.

...

*Art. 28.* The principals, accomplices and accessories after the fact shall be punishable in respect of the offences specified in this law. In addition to completed offences, attempted and frustrated offences shall also be punishable.

*Art. 29.* Persons guilty of the offences referred to in this law shall also be liable to all the concomitant penalties established in the Penal Code.

*Art. 30.* Without prejudice to the other provisions of this law, the Government Junta<sup>1</sup> is empowered to order, as a measure of security, the detention for a period of not less than one or more than six months, any person included in the register established under article 3 of this law.

...

## TRANSITORY PROVISIONS

*Art. 34.* Any person who, within the thirty days following the promulgation of this law, surrenders to the authorities any weapons, munitions, explosives, detonating devices, propaganda material or equipment intended for printing or reproducing such material, the possession of which is punishable under this law, shall not be liable to any penalty.

A record shall be made of the surrender of such objects and a receipt given to the person concerned; the Directorate-General of the Civil Guard shall be notified immediately so that it can issue instructions for the disposal of the objects surrendered.

*Art. 35.* This law shall enter into force on the day of its publication in the *Diario Oficial*.

<sup>1</sup> Decree No. 64, of 1 September 1954, substituted "the President of the Republic" for "the Government Junta".

## ELECTORAL LAW

Decree No. 85, of 21 September 1954<sup>1</sup>

## CHAPTER I

## GENERAL PROVISIONS

*Art. 1.* The election of deputies to the National Constituent Assembly shall be governed by the provisions of this law.

*Art. 2.* The National Constituent Assembly shall be composed of freely elected deputies.

*Art. 3.* Each electoral district shall elect two deputies; however, districts having a population of over 100,000 inhabitants shall elect one additional deputy for every 50,000 additional inhabitants or fraction thereof in excess of 20,000.

...

*Art. 6.* The vote is personal and may not be delegated. Voting shall take place in public.

## CHAPTER II

## QUALIFICATIONS OF DEPUTIES AND VOTERS

*Art. 7.* In order to be a deputy to the National Constituent Assembly, a person must:

(a) Be a native-born Guatemalan belonging to one of the categories specified in article 9, sub-paragraphs (a), (b) and (c) of the Political Statute;

(b) Be a citizen;

(c) Be over twenty-five years of age;

(d) Have no claims outstanding against the State or any municipality in the republic on any grounds whatsoever;

(e) Be of recognized probity;

(f) Furnish proof that he has faithfully discharged his obligations, if he has managed public funds;

(g) Have no jurisdiction in the electoral district in which he is a candidate.

*Art. 8.* Male Guatemalans over eighteen years of age, and Guatemalan women over eighteen years of age who are able to read and write, shall have the right to vote.

*Art. 9.* Voters shall produce their residence cards as proof of their qualifications. The electoral commissions shall examine the voter's residence card in order to ascertain that the holder possesses the qualifications specified in the previous article; the voter's ability to read and write may be established at the time of voting.

*Art. 10.* Voters may vote only in the place where they reside.

[Paragraph added by decree No. 101:] Persons who, by reason of temporary employment or of a recent change of residence, are present on the election day in a place other than the place of domicile shown in the residence card shall, however, be exempted from the application of this provision.

*Art. 11.* The following are prohibited from voting:

(a) Persons against whom a prison sentence is still in force;

(b) Serving personnel of the army, the civil guard and the customs guard.

...

## CHAPTER V

## ELECTIONS

*Art. 18.* The electoral commissions shall be constituted and installed by 7 a.m. on the date appointed for the election and shall proceed to receive the votes cast.

*Art. 19.* Voters shall appear before the electoral commission during the specified hours, each with his residence card and a list of his candidates; if the list is supplied by a nominating organization, it must be printed.

*Art. 20.* After receiving the list and ascertaining that the voter possesses the qualifications referred to in article 8 of this law, the chairman of the electoral commission shall, if the voter is illiterate, read the list to him and ask him whether he votes for the persons whose names are given in the list. The following shall then be entered in the register of voters:

(a) The full name of the voter as shown in his residence card;

(b) The serial and registration number of the residence card;

(c) The voter's signature, or his thumb print if he is unable to sign.

*Art. 21.* When the foregoing operations have been completed, the voter shall hand the list of his candidates to the chairman, who shall seal it and deposit it in the ballot box.

*Art. 22.* Polling may not be interrupted, but if, owing to some unforeseen event, an interruption cannot be avoided, the fact shall be recorded in the final records.

*Art. 23.* The polls shall be closed at 6 p.m. or, in the circumstances referred to in article 5 of this

<sup>1</sup> Spanish text of Decree No. 85 in *Decretos Emitidos desde el 3 de julio al 31 de diciembre 1954*, Guatemala, 1955, received through the courtesy of Mr. Domingo Goicolea Villacorta, Minister for Foreign Affairs. Translation by the United Nations Secretariat.

law, later. The votes shall thereupon be counted and a detailed record of the results shall be entered in the register immediately after the last vote recorded. The following particulars shall be entered in the record: the place, date and time of the opening of the polls, the names of the members of the electoral commission, the number of votes cast and the names of the candidates for whom they were cast, and the number of invalid votes, the reasons for their invalidity being stated.

#### CHAPTER VI

...

*Art. 27.* Deputies shall be returned by a relative majority; the candidate obtaining the largest number of valid votes in each electoral district shall be declared elected.

*Art. 28.* Deputies shall enjoy immunity from jurisdiction from the time they are declared elected; such immunity may be waived only by the National Constituent Assembly.

...

#### CHAPTER VIII

*Art. 34.* Organizations nominating candidates shall enjoy free telegraph services on the day of the election day for the purpose of communicating with the governors of the departments and the Minister of Internal Affairs to state complaints concerning the improper application of this law.

*Art. 35.* All questions concerning the interpretation and application of this law shall be decided by the Minister of Internal Affairs.

*Art. 36.* If an election is declared null and void, or a candidate who has been elected does not possess the qualifications required by law, a new election shall be held in the electoral district concerned.

*Art. 37.* The Minister of Internal Affairs shall supply the registers and forms required for the election and shall be responsible for taking the necessary action to ensure the strict application of this law.

*Art. 38.* This decree shall enter into force on the day of its publication in the *Diario Oficial*.

### ELECTORAL LAW

#### Decree No. 89, of 21 September 1954<sup>1</sup>

*Art. 1.* All male Guatemalans over eighteen years of age, and female Guatemalans over eighteen years of age able to read and write, are hereby invited, in connexion with the exercise of their right to vote in

the elections to be held on 10 October 1954, to give a categorical answer, in the affirmative or in the negative, to the following question:

"Are you in favour of Lieutenant-Colonel Carlos Castillo Armas continuing as President for a term to be established by the National Constituent Assembly?"

...

<sup>1</sup> Spanish text of Decree No. 89 in *Decretos Emitidos desde el 3 de julio al 31 de diciembre 1954*, Guatemala, 1955, received through the courtesy of Mr. Domingo Goicolea Villacorta, Minister for Foreign Affairs. Translation by the United Nations Secretariat.

#### DECREE No. 186 of 21 December 1954

#### SUMMARY<sup>1</sup>

This decree sets up a Military Provident Fund for the purpose of providing financial assistance to the families of members of the National Army in case of death, and to grant small loans to members of the Army in active service.

<sup>1</sup> Spanish text of decree No. 186 in *Decretos Emitidos desde el 3 de julio al 31 de diciembre 1954*, Guatemala, 1955, received through the courtesy of Mr. Domingo Goicolea Villacorta, Minister for Foreign Affairs. Summary by the United Nations Secretariat.



## AGRARIAN STATUTE

Decree No. 31 of 26 July 1954<sup>1</sup>

## CHAPTER I

## FUNDAMENTAL PRINCIPLES

## I

Every Guatemalan has the right to receive, as private property with full safeguard, the land necessary to ensure the economic subsistence of himself and his family. Property created in accordance with this principle shall be considered family property and shall enjoy all due protection and assistance.

## II

The State has the inescapable duty to make available for agricultural exploitation, on rational and technical lines, those areas of the country which are still excluded from prosperous economic activity by lack of communications, irrigation, drainage or population. It will therefore be the fundamental policy of the State to devote the greatest possible volume of funds and resources to the construction of means of communication and the execution of other works calculated to facilitate the development of the land and the more intensive settlement of the national territory.

## III

Idle land is incompatible with national welfare and economic progress, and the Government will therefore take all necessary and appropriate steps to reduce the amount of such land.

## IV

It is the duty of the State to promote the expansion of national wealth, and particularly of agricultural production.

## V

The State will give continuing and preferential attention to agrarian matters. Consequently, no acts which violate these principles will be tolerated and no person may take justice into his own hands. Any conflict, dispute, question or claim which may arise will be decided immediately and exclusively by the competent authorities.

## VI

Any form of unpaid agricultural work is a serious affront to the dignity of Guatemalans as free men;

no undertaking on the part of a labourer to perform any task or work by way of compensation for benefits of any kind will be binding.

## CHAPTER II

## GENERAL PROVISIONS

*Art. 1.* Peasants and agricultural labourers who received plots of land, credits and other benefits resulting from the application of the Agrarian Reform shall remain in possession, and shall retain the use and enjoyment thereof, under the same conditions and subject to the same obligations as heretofore pending the enactment of a new agrarian reform Act providing for the definitive settlement of the question.

*Art. 2.* This law shall govern the peaceful relations between peasants and the owners of rural estates pending the enactment of the agrarian reform Act embodying the fundamental principles promulgated in this law.

...

*Art. 4.* No new expropriation of land may be initiated and expropriation proceedings with regard to cases already initiated may not be continued, until the promulgation of the new agrarian reform Act. This prohibition shall apply to the registration of expropriations in the Register of Immovable Property and to any other procedure implying the completion of a new expropriation.

*Art. 5.* National agricultural undertakings and rural estates shall be the subject of special legislation which will provide for their fuller utilization in a manner calculated to benefit the national economy and to ensure the participation of the greatest possible number of Guatemalans. Until such legislation is enacted, they shall remain in their present condition, and the Directorate-General of Agrarian Affairs shall ensure that they maintain and, as far as possible, increase their production. To this end, the Directorate may take such action as each individual case requires, subject to the guiding principle of affording all possible assistance and protection to the peasants.

...

*Art. 8.* As from the entry into force of this law, rural land-owners shall recover in full their property rights over dwellings built by them at their own expense. In order to carry out acts of ownership, or to exercise any legal rights, concerning these dwellings, it shall, however, be necessary to obtain prior authorization from the Directorate-General of Agrarian Affairs, which shall ensure that this provision is prudently applied and shall intervene directly in any act concerned with its implementation.

...

<sup>1</sup> Spanish text of decree No. 31 in *Decretos Emitidos desde el 3 de julio al 31 de diciembre 1954*, Guatemala, 1955, received through the courtesy of Mr. Domingo Goicolea Villacorta, Minister for Foreign Affairs. Translation by the United Nations Secretariat.

## CHAPTER IV

SPECIAL REVIEW PROCEDURE  
IN AGRARIAN MATTERS

*Art. 15.* Review proceedings in agrarian matters shall be initiated only at the request of the interested parties.

*Art. 16.* Rural land-owners whose estates have been expropriated and granted to peasants under congressional decree No. 900 and amendments thereto, may apply to the agrarian committee of the department concerned for review of the case. The owner shall submit a brief statement of the facts of the case and specify the points in connexion with which he considers that the law has been infringed. The agrarian committee shall, on the date of receipt of the application, request by telegram that the original papers of the case be immediately forwarded to it.

*Art. 17.* Review proceedings may also be initiated in cases in which the areas expropriated have been improperly taken from parts of the estate not subject to the expropriation decision, or in which lands have been included which were obviously not subject to expropriation, or which in the opinion of the Directorate-General of Agrarian Affairs, irreparably damage the geographical and economic unity of the estate.

*Art. 18.* Tenant labourers, agricultural labourers and peasants who consider themselves aggrieved by arbitrary application of congressional decree No. 900 and amendments thereto, may also request review of the decisions affecting them, to ensure that the awards are accorded priority in the order laid down. In such cases, the procedure laid down in this chapter shall be followed, in so far as it is applicable, save with regard to appearances and applications, which shall be entered orally and put on record.

...

## CHAPTER V

## SPECIAL PROVISIONS

*Art. 33.* Congressional decrees Nos. 712 and 853 are hereby repealed. In consequence, any person occupying land under a compulsory lease shall be required to return the land as soon as he has completed the harvest of standing crops. No compulsory lease may continue beyond 31 March 1955. The Directorate-General of Agrarian Affairs shall be responsible for ensuring the enforcement of this provision.

*Art. 34.* Peasants, agricultural labourers and tenant labourers who have taken possession of land or dwellings as squatters shall surrender the land or dwellings to officials of the Directorate-General of Agrarian Affairs who shall restore them to their owners. Land shall not be surrendered until any standing annual crops have been harvested by the person who sowed them.

*Art. 35.* Owners of land which has been invaded, occupied or illegally held by others shall so notify the Directorate-General of Agrarian Affairs for the purposes of the previous article.

## CHAPTER VI

## FINAL PROVISIONS

*Art. 36.* Pending the promulgation of the new constitution of the Guatemalan Republic and the enactment of the agrarian reform Act, no plea may be entered alleging that any act or transfer of property resulting from the application of this law, and of decree No. 900 of the Congress of the Guatemalan Republic and amendments thereto, is unconstitutional. For such purposes, this law shall, because of its character as a security measure, constitute an exception to the statute promulgated in decree No. 3 of the Government Junta.

...

## DECREE No. 170

of 10 December 1954<sup>1</sup>

*Art. 1.* Rural land-owners shall be under an obligation to furnish free of charge to their tenant labourers the customary area of land for seasonal crops, with the exception of such labourers as already possess plots of land.

*Art. 2.* Land-owners granting land to peasants other than tenant labourers are authorized to collect

a rent in cash or in kind of not more than 5 per cent of the total harvest of each seasonal crop.

*Art. 3.* Land which is granted to tenant labourers or leased to peasants for the purposes indicated shall in no case be subject to expropriation.

...

*Art. 5.* Freedom of contract shall apply with regard to irrigated land or land especially suited for crops of greater economic value.

...

<sup>1</sup> Spanish text of decree No. 170 in *Decretos Emitidos desde el 3 de julio al 31 de diciembre 1954*, Guatemala 1955, received through the courtesy of Mr. Domingo Goicolea Villacorta, Minister for Foreign Affairs. Translation by the United Nations Secretariat.

DECREE No. 148  
of 16 November 1954<sup>1</sup>

Article 324-A of the Penal Code shall be amended to read as follows:

"Any person who is under an obligation to provide maintenance for a minor child, a destitute parent, or an invalided spouse, brother or sister, by virtue of a

final Court decision or an agreement subscribed to in an authentic or notarial deed, and who refuses to perform such obligation, after he has been requested to do so in the legal form by the competent authorities, shall be punishable by ordinary imprisonment for a term of one year, unless he can prove that he has no financial means to fulfil such obligation. Any person who, in order to evade his maintenance obligations, transfers his assets to third parties, or employ of any other means to arrive at the same result shall be liable to the like penalty."

<sup>1</sup> Spanish text of decree No. 148 in *Decretos Emitidos desde el 3 de julio al 31 de diciembre 1954*, Guatemala, 1955, received through the courtesy of Mr. Domingo Goicolea Villacorta, Minister for Foreign Affairs. Translation by the United Nations Secretariat.

DECREE No. 80  
of 10 September 1954  
*SUMMARY*<sup>1</sup>

Decree No. 80, of 10 September 1954, amending article 103 (c) of government decree No. 2081, which enacted statutory regulations on education, provides that duly authorized private educational establish-

ments which comply with the requirements specified in that article, to the satisfaction of the competent education inspector, shall not be required to apply for annual renewal of their licences. The principals or persons in charge of such institutions are required only to submit within the first two weeks of each school year information relating to school equipment and teaching and administrative staff and evidence that the state of the establishment is satisfactory from the sanitary and educational points of view.

<sup>1</sup> Spanish text of decree No. 80 in *Decretos Emitidos desde el 3 de julio al 31 de diciembre 1954*, Guatemala, 1955, received through the courtesy of Mr. Domingo Goicolea Villacorta, Minister for Foreign Affairs. Summary by the United Nations Secretariat.

INDUSTRIAL TRAINING LAW  
Decree No. 138, of 4 November 1954<sup>1</sup>

*Art. 1.* Industrial training centres shall be set up in such places, and subject to such conditions, as may be specified by the Executive through the Department of Education.

*Art. 2.* The primary aim of the industrial training centres shall be to provide technical and practical training to enable persons to work efficiently in the various branches of industry.

...

*Art. 5.* The curriculum of industrial training centres shall comprise two courses of theoretical and practical training—(a) trade, and (b) technical.

*Art. 6.* The trade course shall last for four years and shall provide instruction in:

(1) electrical trades; (2) mechanical trades; (3) automotive trades; (4) printing; (5) carpentry; (6) ceramics; (7) textiles; (8) general workshop.

*Art. 7.* The technical training course shall last for three years in addition to the trade course and shall provide instruction in: (1) electrical engineering; (2) mechanical engineering; (3) ceramics; (4) textiles; (5) industrial chemistry; (6) training of industrial supervisory personnel.

...

*Art. 17.* Candidates for admission to an industrial training centre must possess a bent for one of the subjects included in the curriculum, have completed at least the first three grades of primary education and pass an admission test as proof of ability.

*Art. 18.* Pupils shall receive industrial training, in accordance with their ability, in the branch for which they are suited.

...

<sup>1</sup> Spanish text of decree No. 138 in *Decretos Emitidos desde el 3 de julio al 31 de diciembre 1954*, Guatemala, 1955, received through the courtesy of Mr. Domingo Goicolea Villacorta, Minister for Foreign Affairs. Translation by the United Nations Secretariat.

## LAW CONCERNING PERMANENT CULTURAL COMMISSIONS

Decree No. 145, of 12 November 1954<sup>1</sup>

*Art. 1.* Permanent cultural commissions shall be established, each consisting of a husband and wife who shall reside in the most appropriate locality of each of the more backward municipalities of the Republic.

...

*Art. 3.* The primary aim of the permanent cultural commissions shall be to raise the material and spiritual conditions of life of backward groups. To this end, the persons appointed as members of commissions shall have the following duties:

(a) To win the confidence of the leading influential residents of the areas to which they are appointed;

(b) To maintain friendly relations with all the families living in the area;

(c) To respect the traditions, usages and customs of the area;

(d) To furnish elementary theoretical and practical education to adults;

(e) To gain the friendship of the children, helping them to direct their interests along constructive lines, through the means best suited to local conditions;

(f) To co-operate closely with the local inhabitants in the study and planning of measures to alleviate the problems of housing, feeding, clothing, entertainment and health, maintaining, in connexion with the latter, friendly relations with local healers;

(g) To contribute, by their work and their action, to the improvement of general conditions arising from the lack or insufficiency of basic public services, such as electric light, drinking water, roads, etc.;

(h) To take an active part in assistance, health and social work;

...

<sup>1</sup> Spanish text of decree No. 145 in *Decretos Emitidos desde el 3 de julio al 31 de diciembre 1954*, Guatemala, 1955, received through the courtesy of Mr. Domingo Goicolea Villacorta, Minister for Foreign Affairs. Translation by the United Nations Secretariat.

# HAITI

## NOTE<sup>1</sup>

### I. CONSTITUTION AND LEGISLATION

No amendments were made to the Constitution during 1954. Six Acts affecting human rights were passed.

(1) The most important of these, the Act of 19 July 1954, brings the electoral decree of 4 August 1950 into harmony with the provisions of the Constitution of 25 November 1950 and deals mainly with the exercise of the political rights granted to women by the Constitution. The Act was published in *Le Moniteur* (the Haitian official gazette) No. 69, of 12 August 1954.

It should be recalled in this connexion that article 4 of the Constitution,<sup>2</sup> read in conjunction with final transitional provisions A, B and C of the Constitution, proclaimed the principle that "All Haitians, without distinction of sex, may exercise political rights on attaining the age of 21 years"; in fact, however, it granted women the full exercise of these rights (the right to elect and the right to be elected) only in two stages. To begin with, the exercise of political rights by women was restricted to municipal or communal offices for the next elections to those offices—i.e., those held in January 1955; secondly, "within a period not to exceed three years from the next general municipal elections, the law shall grant to women full and complete exercise of all political rights", meaning that women may elect or be elected to the offices of deputy, senator and President of the Republic. Under the new Constitution, future presidential elections are to be held by direct popular suffrage and not at second hand, as previously. Since, however, the Constitution stipulates that the period may not be extended, but does not state that it may be reduced, it is to be feared that the restrictive interpretation which seems inherent in this provision will mean that women will still not be permitted to take part in the next senatorial elections in January 1957 or in the presidential elections of April 1957, though this was not the real intention of a large number of the members of the 1950 Constituent Assembly.

The electoral decree of 4 August 1950 was issued by a revolutionary government, prior to the adoption of the Constitution of 25 November 1950, its purpose

being to provide for the simultaneous election of new legislative chambers, the President of the Republic, and the members of a special Constituent Assembly, which was precisely to prepare and adopt the Constitution under which women have now, for the first time, secured their political rights, subject to the conditions referred to above. Hence it was essential to amend the electoral decree to bring it into line with the Constitution and to introduce a standard electoral procedure whose main purpose would be to permit women as well as men to exercise their right to elect and be elected within the limits set for the time being by the Constitution, since the elections of January 1955 were for both legislative and municipal offices. (Women did in fact take part in those elections throughout the republic, no doubt in greater numbers in the capital city and in those towns where the electoral campaign organized by the Women's League for Social Action had been particularly effective. There are no statistics to hand to indicate the number of women voters in the capital or throughout the republic, or the percentage of women's votes as compared with the total number of voters. It should, however, be mentioned that seven women were elected members of the communal councils of Pétionville, les Gonaïves, Jérémie, St. Marc and three smaller places, Cabaret, Mont-Organisé and Anse-à-Foleur. Judging from newspaper reports, two or three of these first women communal councillors have already evidenced their energy and efficiency.)

(2) The Trademarks (Registration and Licensing) Act of 17 July 1954, published in *Le Moniteur* No. 70, of 16 August 1954. This Act amends and supplements the Acts of 18 December 1922 and 1 March 1937 so as to bring Haitian law on the subject into harmony with international conventions and agreements ratified in the meantime by the Republic of Haiti, and to remedy certain deficiencies found in practice, by introducing more rational and effective arrangements for the protection of industrial property and the prevention of unfair competition.

(3) The Act of 19 July 1954 to amend article 47 of the Immigration and Emigration Act of 19 September 1953 (itself amending the Acts of 27 August and 15 September 1947) with a view to facilitating the entry of foreigners, especially tourists, into Haitian territory and their stay in Haiti. This Act was published in *Le Moniteur* No. 73, of 26 August 1954, and provides simply that an identity certificate and travel permit in lieu of passport may be issued to a foreigner who is resident in Haiti and wishes to travel but is without a

<sup>1</sup> Note prepared by Dr. Clovis Kernisan, Doctor of Laws, Professor in the Faculty of Law at the University of Port-au-Prince, correspondent to the *Tearbook on Human Rights* appointed by the Government of Haiti. English translation from the French text by the United Nations Secretariat.

<sup>2</sup> See *Tearbook on Human Rights for 1950*, p. 116.

passport or has lost his nationality. The certificate is issued on payment of a stamp duty of 50 gourdes. The single article of this Act also authorizes the issue of a permit to re-enter Haiti to any foreigner who applies for it, on payment of a stamp duty of 25 gourdes.

(4) The Act of 21 October 1954 to amend article 3 of the Act of 23 April 1940 concerning the right of challenge and applications for discharge of a judge or even of a court.

(5) The Act of 27 October 1954 referring to lapses, foreclosures, time-limitations or extinctive prescriptions affecting the rights of persons who were prevented by hurricane "Hazel" and the floods of October 1954 from completing certain formalities within the prescribed time-limits, where such time-limits had not expired before 9 October 1954.

(6) Finally, the Act of 30 October 1954 authorizing the issue of special postage stamps known as Solidarity Stamps, the proceeds from the sale of which were earmarked for assistance to the victims of the hurricane.

These last three Acts, the first two designed to give the citizen greater protection against abuses in the administration of justice and the third inspired by humanitarian feelings, were published in one and the same issue of *Le Moniteur* No. 100, of 8 November 1954.

## II. ADMINISTRATIVE MEASURES

The following administrative measures may be mentioned as affecting human rights:

(1) The financial contributions by the Haitian Government for 1954 to the programmes of the Inter-American co-operative public health services and the Inter-American co-operative agricultural production services, the objectives of which are the improvement of health conditions, especially among rural populations, and the improvement of agricultural techniques in order to increase productivity (*Le Moniteur* Nos. 4 and 54, of 14 January and 24 June 1954).

(2) The decree of 9 July 1954 establishing new regulations for vehicular traffic, and occasioned by the need to provide greater safety for pedestrians and highway users, whose lives are increasingly endangered by the rapid and continually expanding development of motor transport (*Le Moniteur* No. 67, of 5 August 1954).

## III. INTERNATIONAL CONVENTIONS

Haiti did not conclude any bilateral treaty affecting human rights in 1954. On the other hand, it ratified no less than twelve multilateral conventions on matters of humanitarian and world interest. These were:

(1) The International Sanitary Regulations adopted by the Fourth World Health Assembly on 25 May 1951—approved by decree of the Haitian National

Assembly on 27 August 1953 and published in *Le Moniteur* No. 13, of 11 February 1954;

(2) International Convention on the Safety of Life at Sea, adopted in London on 10 June 1948—approved by decree of the Haitian National Assembly on 27 August 1953 (*Le Moniteur* No. 28, of 22 March 1954);

(3) Instrument for the Amendment of the Constitution of the International Labour Organisation adopted at Geneva on 23 June 1953 by the thirty-sixth session of the International Labour Conference—approved by decree of the Haitian National Assembly on 26 May 1954 (*Le Moniteur* No. 57, of 7 July 1954);

(4) Convention concerning Workmen's Compensation for Accidents, adopted by the International Labour Conference at Geneva in June 1925 and in force from 1 April 1927—approved by decree of the Haitian National Assembly on 18 June 1954 (*Le Moniteur* No. 60, of 15 July 1954);

(5) Convention concerning Workmen's Compensation for Occupational Diseases, adopted by the International Labour Conference at Geneva in June 1934 and in force from 17 June 1936—approved by decree of the Haitian National Assembly on 18 June 1954 (*Le Moniteur* No. 61, of 19 July 1954);

(6) Convention concerning Sickness Insurance for Workers, adopted by the International Labour Conference at Geneva in May 1927 and in force from 15 July 1928—approved by decree of the Haitian National Assembly on 18 June 1954 (*Le Moniteur* No. 75, of 30 August 1954);

(7) Convention for the Promotion of Inter-American Cultural Relations, signed at Caracas on 28 March 1954;

(8) Convention on Territorial Asylum, signed at Caracas on 28 March 1954.

The two last-named conventions were approved by decree of the Haitian National Assembly on 16 July 1954 and published in *Le Moniteur* No. 76, of 2 September 1954.

(9) Convention on Diplomatic Asylum, signed at Caracas on 28 March 1954—approved by decree of the Haitian National Assembly on 16 July 1954 (*Le Moniteur* No. 80, of 16 September 1954);

(10) Convention concerning Sickness Insurance for Workers in Industry and Commerce and Domestic Servants, adopted by the International Labour Conference at Geneva in June 1927 and in force from 15 July 1928—approved by decree of the Haitian National Assembly on 18 June 1954 (*Le Moniteur* No. 85, of 27 September 1954);

(11) Convention concerning Equality of Treatment for National and Foreign Workers as regards Workmen's Compensation for Accidents, adopted by the International Labour Conference at Geneva in May

1925 and in force from 8 September 1926—approved by decree of the Haitian National Assembly on 18 June 1954 (*Le Moniteur* No. 86, of 30 September 1954);

(12) Convention concerning Sickness Insurance for

Agricultural Workers, adopted by the International Labour Conference at Geneva in October 1921 and in force from 26 February 1923—approved by decree of the Haitian National Assembly on 18 June 1954 (*Le Moniteur* No. 93, of 21 October 1954).

## HONDURAS

### NOTE<sup>1</sup>

On 6 December 1954 the regime in Honduras became one of *de facto* government as a consequence of a break in the constitutional order due to the failure of the National Congress to open sessions on 5 December 1954 in accordance with the Constitution of the Republic. By decree-law No. 1, of 6 December 1954, the Chief of State assumed all the powers of the State. Article 4 of the decree-law provided that

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<sup>1</sup> Note based upon information received from the Government of Honduras.

for a period of thirty days, and longer if deemed necessary by the Chief of State, all meetings, concentrations and demonstrations of a political character, and all oral or written publications which directly or indirectly tended to alter the public order, were prohibited. Article 3, however, maintained in force, to the extent not opposed to the *de facto* government, the legal institutions of the State, including the Political Constitution of 28 March 1936.<sup>2</sup>

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<sup>2</sup> See *Yearbook on Human Rights for 1946*, pp. 146-149.



# HUNGARY

## LEGISLATION

### ACT No. II OF 1954 ON THE JUDICIAL ORGANIZATION OF THE HUNGARIAN PEOPLE'S REPUBLIC<sup>1</sup>

*Introductory Note.* Act No. II of 1954 on the Judicial Organization of the Hungarian People's Republic integrates the basic provisions concerning the law courts, assures the full enforcement of the constitutional rules referring to judicial organization and lays down the basic guarantees for the democratic administration of justice.

The provision realizing the unity of the administration of justice in virtue of which the same law court shall act uniformly in the case of every citizen and shall apply the same rules of procedure irrespective of the social position, nationality or financial situation of the citizen in question; the principle of the public character of the hearings and the principle that nobody shall suffer any prejudice for not knowing the Hungarian language; the right of the accused to be defended by counsel and the principle of the independence of judges repeatedly laid down in this law in addition to the Constitution—all these are provisions which guarantee most extensively the effectiveness of the human right to liberty.

#### CHAPTER I

#### BASIC PRINCIPLES

*Art. 2.* The courts of the Hungarian People's Republic, in administering justice:

...

(b) protect and assure the political, labour, housing and other personal and financial rights and lawful interests of the citizens guaranteed by the Constitution.

...

*Art. 4.* In the administration of justice of the Hungarian People's Republic, (a) the same courts proceed on the basis of the same principles in the cases of all citizens irrespective of their social and financial standing and nationality; (b) the penal, civil and procedural laws are equally binding upon all courts.

*Art. 5.* In the Hungarian People's Republic the

<sup>1</sup> Hungarian text in *Magyar Közlöny* No. 5, of 24 January 1954. English translation and introductory note received through the courtesy of Mr. Karoly Szarka, Minister of the Hungarian People's Republic, Washington.

judges are independent and subject only to the law (para. 2 of article 41 of the Constitution).<sup>2</sup>

*Art. 6.* Judicial proceedings are conducted in Hungarian.

Nobody shall suffer any prejudice through not knowing the Hungarian language. Persons not knowing the Hungarian language may use their mother tongue both orally and in writing in the whole course of the proceedings and may acquaint themselves with the substance of the case through an interpreter.

*Art. 7.* (1) The hearings before all courts of law are public, unless otherwise prescribed by law (para. 1 of article 40 of the Constitution).<sup>2</sup>

(2) All accused before the courts are guaranteed the right of defence during the judicial proceedings.

...

*Art. 9.* In the Hungarian People's Republic judicial offices are filled by election (article 39 of the Constitution).<sup>3</sup>

<sup>2</sup> See *Tearbook on Human Rights for 1949*, p. 95.

<sup>3</sup> See *Tearbook on Human Rights for 1951*, p. 128.

### ACT No. V OF 1954, AMENDING ACT No. III OF 1951 ON CRIMINAL PROCEDURE<sup>1</sup>

*Introductory Note.* The provisions referring to the procedure for investigation and arrest of a charged person by the investigating authorities made in Act V of 1954 on the Amendment of Criminal Procedure expresses the principle that nobody should be arrested or kept under arrest without foundation, and that the investigation should be carried out with the minimum of inconvenience to personal liberty and with the fullest regard thereto possible.

<sup>1</sup> Hungarian text in *Magyar Közlöny* No. 46, of 29 June 1954. English translation and introductory note received through the courtesy of Mr. Karoly Szarka, Minister of the Hungarian People's Republic, Washington.

*Art. 91 (A) (1)* Investigations shall be terminated within one month from the day when they have been ordered. Exceptionally, when justified by the unusual complexity of the case or by some insurmountable difficulty, the county public prosecutor may extend the durations of the investigation by one month.

*Art. 99. (1)* The investigating authorities may keep the charged person under arrest for twenty-four hours. The duration of such arrest may be extended by a further forty-eight hours by approval of the public prosecutor to be given within twenty-four

hours from the beginning of the arrest. The charged person shall be kept under arrest for more than seventy-two hours only on the strength of confinement under remand ordered with the approval of the public prosecutor; failing such approval the charged person shall be released.

(2) Confinement under remand ordered or approved by the public prosecutor shall last until the preliminary session but not longer than one month. If this is justified by the complexity of the case, the county public prosecutor may extend the confinement under remand by another month.

## ACT No. I OF 1954 ON THE HANDLING OF COMMUNICATIONS RECEIVED FROM THE POPULATION<sup>1</sup>

*Introductory Note.* From the point of view of human rights Act No. I of 1954 on communications from the population is important as it assures by law and at the same time substantially extends the right of complaint of the citizen. According to this law every citizen is entitled to make a communication in respect of shortcomings found in the work of state organs, and the state organs are bound to investigate these communications most scrupulously and to advise the informant of their findings. A remarkable provision of this law establishes penal sanctions for any case of prejudice caused to the informant for having availed himself of his right of complaint.

The interests of the state of the Hungarian people demand observance of the law, economy in the management of the people's property, conscientious administration free of bureaucracy, continual improvement of the work of the state and economic organs and the satisfaction in an increased degree of the needs of the population.

In order to promote these aims it is necessary that criticism coming from below should develop as vigorously as possible among the population. Any citizen may complain of any wrong he has suffered. It is the right and duty of honour of every citizen to reveal any faults and deficiencies appearing in any sphere of state and economic life, to initiate continual improvement in the work of the state and economic organs and to fight against wastage and bureaucratic administration.

The state and economic organs shall provide for all pre-conditions enabling the citizens to avail themselves of this right: the said organs shall examine promptly and with due circumspection all communications from the population, and if they find faults or wrongs they shall eliminate them without delay. The state and economic organs shall profit by the communications of the citizens and the result of inquiries held upon the same to improve their work continually.

The purpose of this Act is to protect by law the

above-mentioned interests of the Hungarian people and rights of the citizen.

*Art. 1. (1)* The heads of the organs of state administration, of the local organs of the state power and of the economic organs (hereinafter called organs) are personally responsible for ensuring that the organs directed by them and those subject to their supervision consider it as their permanent task to deal with the communications of the population and the said heads of organs shall systematically control this work.

(2) The heads of the organs shall ensure that each communication is examined thoroughly and without delay and that adequate measures made necessary by the result of the inquiries are taken, and they shall make sure that such measures are put into full effect.

*Art. 2.* The heads of the organs shall provide for the systematic control of the handling of communications. To this effect, (a) they shall see that the communications and any action to be taken upon them are followed with attention; (b) they shall take steps to ensure that a person is appointed to conduct the inquiry in every case and that a date for the termination of the inquiry is fixed.

*Art. 3.* Within all ministries, and all county, district and town councils, offices shall be organized to deal with the communications of the population. Such offices may also be organized by other organs, with the approval or by order of their superior authority. The detailed rules of the work of these offices shall be established by the heads of the organs taking

<sup>1</sup> Hungarian text in *Magyar Közlöny* No. 5, of 24 January 1954. English translation and introductory note received through the courtesy of Mr. Karoly Szarka, Minister of the Hungarian People's Republic, Washington.

into account the basic principles defined in the present Act.

*Art. 4. . . .*

(2) The inquiry to be made upon a communication shall not be entrusted to any person interested in the matter, or to any organ directly interested.

*Art. 8. (1)* The organ attending to the inquiry shall not disclose the identity of the informant if the latter so desires or if the interest of the case so requires.

(2) Should any measures prejudicial to the informant in connexion with his employment or otherwise be taken for his having called the attention of the competent organs to some fault, irregularity or de-

ficiency, the supervising organ of the organ having taken such measure shall at once re-establish the lawful situation. Such organ shall also provide for a proper moral satisfaction to be given to the person having suffered such prejudice and for his being reimbursed for any financial loss he may have suffered. The head of the organ shall call to account the person responsible for such measure, both by disciplinary action and financially in accordance with the applicable law.

*Art. 9.* A crime shall be deemed to have been committed by the person having applied to the informant any of the prejudicial measures mentioned in article 8(2), and such crime shall be punished by imprisonment not exceeding six months, or by a fine not exceeding 5,000 forints.

## DECREE-LAW No. 28 OF 1954 OF THE PRESIDENTIAL COUNCIL OF THE PEOPLE'S REPUBLIC ON WORKERS' SOCIAL INSURANCE PENSIONS<sup>1</sup>

*Introductory Note.* The Hungarian People's Republic protects and assists workers during working incapacity or old age and provides for the dependants of deceased workers.

The State of the working people has so far uniformly assured a pension to the workers and has granted substantial advantages to those doing heavy and dangerous work. Decree-law No. 28 of 1954 means another step in the field of such care for incapacitated workers and substantially improves the provision made for the old, the disabled, widows and orphans. This decree-law thereby ensures to a large group of citizens their right to an undisturbed life free of want.

The Hungarian People's Republic protects and helps the workers in case of disability and old age and provides for the maintenance of the family of the deceased worker.

The State of the Working People has so far ensured the pension of the workers and has granted substantial advantages to those doing difficult and dangerous work.

The present decree-law represents a new step towards providing for disabled workers and substantially improves the provision made for the old, invalids, widows and orphans.

### APPLICATION OF THE DECREE-LAW

*Art. 1. (1)* This decree-law shall apply to those who, by virtue of their contract of service, are entitled to sickness allowances under the national social insurance scheme, as well as to the professional members of the People's Army.

(2) The decree-law shall not apply to (a) those foreign workers employed by foreign employers within the territory of the Hungarian State who under the laws of their own country are entitled to a pension also by reason of their service in Hungary; (b) workers employed by foreign diplomatic missions, by inter-

national organs enjoying extraterritoriality or by persons enjoying extraterritoriality. On the request of these organs the decree-law may be extended to their Hungarian workers by the Minister of Finance.

### OLD-AGE PENSIONS

*Art. 2. (1)* Any man over sixty years and any woman over fifty-five years who has spent ten years at least in service shall be entitled to an old-age pension.

(2) Any man over fifty-five years who has spent twenty-five years and any woman over fifty years who has spent twenty years in underground or unhealthy work shall be entitled to an old-age pension without regard to the age-limit as fixed in para. 1. The Council of Ministers shall be empowered to extend this benefit of the law to workers employed in other spheres of activity.

(3) Any man over fifty-five years who has worked for twenty years at least and has within that period of time worked for fifteen years in an area exposed to a pressure greater than that of one atmosphere shall also be entitled to an old-age pension.

### INVALIDS' PENSIONS

*Art. 3. (1)* An invalid's pension shall be due in case of disability to workers whose disability is not likely to cease within one year if the worker has spent in service:

<sup>1</sup> Hungarian text in *Magyar Közlöny* No. 72, of 23 September 1954. English translation and introductory note received through the courtesy of Mr. Karoly Szarka, Minister of the Hungarian People's Republic, Washington.

Up to his 22nd year, 3 years; or in underground or unhealthy work, 2 years;  
 From his 22nd to his 25th year, 4 years; or in underground or unhealthy work, 3 years;  
 From his 25th to his 30th year, 6 years; or in underground or unhealthy work, 4 years;  
 From his 30th to his 35th year, 8 years; or in underground or unhealthy work, 5 years;  
 From his 35th to his 40th year, 10 years; or in underground or unhealthy work, 6 years;  
 After his 40th year, 10 years, or in underground or unhealthy work, 7 years.

(2) Without regard to the time spent in service, an invalid's pension shall be due to anybody whose disability results from an injury during employment or from an occupational disease.

#### ACCIDENT ALLOWANCES

*Art. 4.* (1) Without regard to the time spent in service an allowance shall be due to any worker whose working capacity has been lessened by more than 15 per cent in consequence of an injury suffered during employment or an occupational disease. If the capacity for work is not affected by more than 25 per cent the allowance shall be due during two years at the most.

(2) If the worker's working capacity is permanently reduced by 67 per cent or more, an invalid's pension shall be established instead of the allowance.

(3) Any accident occurring in connexion with the performance of duties resulting from the contract of service, either within the enterprise or outside it, shall be considered as an injury suffered during employment, and any disease resulting from the special danger of the worker's occupation shall be considered as an occupational disease.

#### WIDOWS' PENSIONS

*Art. 5.* (1) A widow's pension shall be due to any widow during one year from the death of her husband, if her husband has spent the time required for an invalid's pension in service or has died in consequence of an injury during employment or of an occupational disease (temporary widow's pension).

(2) The widow's pension is due to the widow also after one year (a) if she has at the time of her husband's death completed her fifty-fifth year; (b) without regard to her age, if at the time of her husband's death she is in consequence of her state of health or of a bodily infirmity unfit for work to the extent of two-thirds; or if she provides for the maintenance of at least two children entitled to an orphan's allowance; or if her husband was a miner working underground and has died in consequence of an injury suffered during employment (permanent widow's pension).

(3) In addition to the entitlement defined in para. 2, a permanent widow's pension shall be due to the widow if (a) she reaches her fifty-fifth birthday or loses her capacity for work to the extent of two-thirds at least, provided that at the time of the death of her

husband she had completed her fortieth year; (b) at the time of her husband's death she had not yet completed her fortieth year, but had lost her capacity for work to the extent of two-thirds at least within ten years from the death of her husband.

*Art. 6.* (1) Both the temporary and the permanent widow's pension shall cease if the widow concludes a new marriage.

(2) A widow's pension allowed regardless of the age of the widow under para. 2 (b) of article 5 shall also cease if (a) the unfitness for work of the widow becomes less than two-thirds, or (b) she has no longer any child entitled to an orphan's maintenance.

*Art. 7.* If a widow's pension ceases for a reason other than the conclusion of a new marriage, the claim of the widow to a pension shall revive (a) if she loses her capacity for work to the extent of two-thirds at least, or if she reaches her fifty-fifth year, provided that the pension has ceased after her fortieth year; (b) without regard to her age if, within ten years from the cessation of her pension, her unfitness for work occurs again to the extent of up to or over two-thirds.

*Art. 8.* Within the limits of articles 5 to 7, the widow of a pensioned person shall also be entitled to a pension.

*Art. 9.* (1) To a woman whose marriage has been dissolved or who has been living for more than a year separated from her husband, a widow's pension shall be due only if at the time of her husband's death she was entitled to claim maintenance from him. In this case the widow's pension shall not exceed the amount of the said maintenance.

(2) A widow whose husband has at the time of their marriage already completed his sixtieth year shall be entitled to a widow's pension only if a child was born from the marriage (cohabitation) or if after the conclusion of the marriage the spouses have been living with each other for five years at least.

(3) Under the conditions fixed for the widow's pension of the wife, a widow's pension shall be due also to a woman (life-partner) who has lived with the deceased for one year immediately prior to his death, if a child was born from their cohabitation and the man has acknowledged his paternity or the latter has been finally established by the court.

(4) If several persons are entitled to the widow's pension, the pension shall be divided among them.

*Art. 10.* (1) A widower incapable of work shall also be entitled to a widower's pension if before the death of his wife the latter had provided for him in her own household essentially through her own earnings or if the court had fixed a maintenance for the husband, provided that the wife was entitled to a pension.

(2) The widower's pension of the husband shall cease if he becomes fit for work or concludes a new marriage.

*Art. 11.* A widow whose permanent widow's pension ceases in consequence of her concluding a new marriage shall be entitled to an indemnity equal to the amount of her widow's pension for one year.

#### ORPHANS' MAINTENANCE ALLOWANCES

*Art. 12.* (1) The child, stepchild or adopted child of the deceased worker or of the deceased pensioner shall be entitled to an orphan's maintenance allowance if the worker (or pensioner) has spent the time required for an invalid's pension in service. An orphan's maintenance allowance shall be equally due to a foster-child, a brother, a sister or a grandchild, if the worker or pensioner had been maintaining them in his own household, provided that the foster-child, brother, sister or grandchild has no relative obliged to and capable of taking care of his or her maintenance.

(2) The child of a worker deceased in consequence of an injury during employment or of an occupational disease shall be entitled to an orphan's maintenance allowance without regard to the time spent in service.

(3) The orphan's maintenance allowance shall be due until the child completes its sixteenth year or if it pursues further studies until it completes its eighteenth year. If after reaching its sixteenth year the child is in consequence of a bodily or mental infirmity permanently unfit for work and in need of maintenance, an orphan's maintenance allowance shall be due regardless of age for the time of this condition.

(4) Should an orphan be entitled on several grounds to an orphan's maintenance allowance, the higher amount shall be due.

(5) The orphan's maintenance allowance shall subsist even if the widowed parent of the child concludes a new marriage.

#### PARENTS' PENSIONS

*Art. 13.* A parent's pension shall be due to the parent or grandparent unfit for work of a worker who dies after having reached the time of service required for an invalid's pension, if the parent or grandparent has been totally or essentially maintained by the worker during the year preceding his death. The parent or grandparent of a worker deceased in consequence of an injury during employment or of an occupational disease, as well as the parent or grandparent of a pensioned worker, shall be entitled to a parent's pension without regard to the time spent in service.

#### FAMILY ALLOWANCES

*Art. 14.* A pensioner shall be entitled to a family allowance with regard to his children under the same conditions as an actual worker.

#### CONSORT'S ALLOWANCES

*Art. 15.* (1) A consort's allowance shall be due to the pensioner after his consort (life-partner) has

completed the age required for an old-age pension if the pensioner provides for the maintenance of the consort (life-partner) and the latter has no pension or earnings of any importance and would be entitled to a widow's pension in case of the pensioner's death.

(2) The amount of the consort's allowance shall be fixed by the Minister of Finance.

#### THE TIME SPENT IN SERVICE

*Art. 16.* In establishing the time spent in service the term spent by the worker in service receiving sickness insurance or in professional army service shall be taken into consideration.

*Art. 17.* If there is a continued interruption of more than five years in the service of the worker, the time spent in a service previous to the interruption shall be taken into consideration as regards pension only, under conditions laid down by the Council of Ministers.

#### THE AMOUNT OF MAINTENANCES

*Art. 18.* The amount of an old-age and an invalid's pension, as well as that of the allowance in case of an accident, shall be fixed on the basis of the beneficiary's wages.

*Art. 19.* The old-age and invalid's pension consists of a basic pension and an additional pension.

*Art. 20.* The basic old-age pension amounts to 50 per cent of the wages to be taken into consideration in fixing the pension.

*Art. 21.* (1) The basic invalid's pension of a person amounts to the following percentages of the wages to be taken into consideration in fixing the pension:

If he has totally lost his capacity for work in his ordinary earning profession and in any other profession and needs to be nursed by others (invalid of category I) (a) in the case of a disability caused by an injury during employment or by an occupational disease, 80 per cent; (b) in the case of a disability resulting from any other cause, 70 per cent;

If he has totally lost his capacity for work in his ordinary earning profession and in any other profession, but does not need to be nursed by others (invalid of category II), (a) in the case of a disability caused by an injury during employment or by an occupational disease, 70 per cent; (b) in the case of disability resulting from any other cause, 60 per cent;

If he is unfit for systematic work in his usual earning profession under the customary conditions and has also lost his capacity for work to two-thirds at least, so that his remaining fitness enables him only to do occasional work or work of a considerably lower classification than that of his former profession or work requiring a considerably lower qualification (invalid of category III), (a) in case of a disability caused by an injury during employment or by an

occupational disease, 60 per cent; (b) in case of a disability resulting from any other cause, 50 per cent.

(2) To category III belongs also any person whose capacity for work has been diminished by 67 per cent at least and 90 per cent at most in consequence of an injury during employment or of an occupational disease.

*Art. 22.* For every year spent in service after 1 January 1955, one per cent of the basic pension shall be due as additional pension.

*Art. 23.* (1) The amount of the old-age pension and that of the invalid's pension shall not exceed the amount of the wages taken into consideration in fixing the pension.

(2) The amount of the old-age pension shall not be less than five hundred forints monthly, or, if 75 per cent of the wages taken into consideration in fixing the pension are less than that sum, it shall not be less than 75 per cent of the wages.

(3) The amount of the invalid's pension shall not be less than five hundred forints monthly—or, if 75 per cent of the wages taken into consideration in fixing the pension are less than that sum, it shall not be less than the amount of the wages.

*Art. 24.* (1) The widow's pension shall amount to 50 per cent of the pension due to the deceased husband in case of old age.

(2) The pension of a widow whose husband has died in consequence of an injury during employment or of an occupational disease shall amount to 70 per cent of the pension due to the deceased husband in case of old age.

*Art. 25.* (1) The orphan's maintenance allowance shall amount to 50 per cent of the widow's pension for each child but shall not be less than 100 forints monthly; to orphans who have lost both their parents (total orphans) a maintenance allowance amounting to the total sum of the widow's pension but not less than 150 forints monthly shall be due.

(2) Any child whose only living parent is an invalid or who has been abandoned and is not provided for by its only living parent shall be considered with regard to the orphan's maintenance allowance as a total orphan. The parent capable of providing for the child but not doing so shall be proceeded against for the amount of the orphan's maintenance allowance.

(3) The amount of the parent's pension shall be equal to that of the widow's pension. If several parents or grandparents are entitled to the pension, it shall be divided among them in equal shares.

(4) The joint amount of the widow's pension, of the orphan's maintenance allowance and of the parent's pension shall not be more than 125 per cent of the pension due to the deceased husband in case of old age; should it exceed this amount, the maintenance—the widow's pension excepted—shall be diminished in proportion. Should, however, the orphan's main-

tenance allowance thus fall below the smallest amount as determined under para. 1, it shall be raised to this amount.

*Art. 26.* (1) Anybody entitled to a maintenance allowance shall, except as provided in para. 2, enjoy it only on one ground. A person entitled to maintenance on several grounds shall decide which maintenance he or she claims.

(2) Should the payment chosen by a widow be under 500 forints, the amount shall be completed by the sum of the payment due to the widow on some other ground, but only up to the sum of 500 forints.

*Art. 27.* No invalid's pension shall be awarded to a person having completed the age required for an old-age pension. This provision shall not apply to a person whose disability results from an injury during employment or from an occupational disease.

*Art. 28.* (1) The allowance due to a person whose capacity for work is diminished in consequence of an injury during employment or of an occupational disease shall amount to 8 per cent of the wages if the bodily harm amounts to 16 to 25 per cent (scale 1); 10 per cent of the wages if the bodily harm amounts to 26 to 35 per cent (scale 2); 15 per cent of the wages if the bodily harm amounts to 36 to 49 per cent (scale 3); 30 per cent of the wages if the bodily harm amounts to 50 to 66 per cent (scale 4); 60 per cent of the wages if the bodily harm amounts to 67 to 90 per cent (scale 5); 70 per cent of the wages if the bodily harm is over 90 per cent (scale 6).

(2) The Council of Ministers shall have the power to fix the smallest amount of the allowance due in case of an accident.

#### CIRCUMSTANCES EXCLUDING CLAIMS

*Art. 29.* Whosoever has caused intentionally his own invalidity or injury shall not be entitled to a pension or to an allowance due in case of an accident. Nor shall any maintenance be due to a relative who has intentionally caused the death of the worker or pensioner.

#### PAYMENT AND SUSPENSION OF PENSIONS

*Art. 30.* (1) During the time spent in service or in an earning profession by the person entitled to the pension, the payment of the old-age pension shall be suspended, and only half of the amount of the invalid's pension—or if the disability results from an injury during employment or from an occupational disease two-thirds of the amount of the invalid's pension—shall be paid.

(2) If after the determination of his pension an old-age pensioner continues to do work imperilling his health or continues to work underground in a mine, he shall be entitled to half of the amount of the pension.

(3) The widow's pension, the orphan's maintenance allowance and the allowance in case of an accident



shall be paid without any restriction also during the time spent in service or in an earning profession.

(4) While abroad the person entitled to a maintenance payment shall be paid such maintenance only with the permission of the Minister of Finance.

*Art. 31.* (1) The payment of the maintenance shall be suspended while the person entitled to it serves a penalty of imprisonment for more than one month.

(2) The payment of an orphan's allowance shall be suspended for any time during which the State provides for the orphan in kind or the orphan is kept in a state orphanage.

#### EXCEPTIONAL PENSION

*Art. 32.* In exceptional cases deserving special consideration the Council of Ministers—or within the limits fixed by the Council of Ministers the Minister of Finance—may fix a pension otherwise than as provided for in the present decree-law.

#### CONTRIBUTIONS TO THE PENSION FUND

*Art. 33.* (1) To cover the costs of the maintenance, the employer as well as the worker shall pay a contribution varying according to the worker's wages.

(2) The contribution to be paid by the worker shall amount to 3 per cent of the wages. With the coming into force of this decree-law, the workers falling under it shall cease to pay the income tax of one per cent.

*Art. 34.* The income resulting from the contributions and the costs of the maintenance shall be provided for in the state estimates.

#### THE DETERMINATION OF MAINTENANCE

*Art. 35.* The rules concerning the determination of maintenance payments due by virtue of the present decree-law, as well as the organs competent to deal with appeals, shall be defined by an order of the Council of Ministers.

#### EXEMPTION FROM DUTIES

*Art. 36.* Proceedings connected with claims resulting from the present decree-law shall be exempt from duty.

#### PROVISIONS CONCERNING MAINTENANCE PAYMENTS DETERMINED UNDER FORMER LEGAL RULES

*Art. 37.* (1) The maintenance payments (pensions, allowances, pension by special favour or exceptional pensions) determined under legal provisions previous to the coming into force of the present decree-law shall continue to be paid even if the pensioner is in service or exercises an earning profession. Such maintenance shall, with the exception of the

cases as defined in paras. 2 and 3, be supplemented by an additional pension.

(2) No additional pension shall be due (a) to those pensioned civil servants or employees of enterprises who have not yet completed the age required for an old-age pension, unless they are invalids; (b) to those pensioned widows of civil servants or employees of enterprises, and to those widows enjoying a widow's allowance under Act No. XL of 1928, who do not meet the conditions required by the present decree-law for a permanent widow's pension; (c) to those persons enjoying an allowance in case of an accident, who were indemnified by reason of the loss of their capacity for work up to 66 per cent in virtue of Act No. VIII of 1912, Act No. XXI of 1927, decree-law No. 30 of 1951, or order No. 6180/1945/VIII.14/M.E., as appropriate; (d) to agricultural pensioners (Act No. XII of 1938 and No. XVI of 1939).

(3) During the time of service and that of the exercise of an earning profession no additional pension shall be due.

*Art. 38.* (1) Any pensioner who was in active service on 30 June 1954, and whose active service ceased after that day, shall be entitled to an additional pension of 30 per cent, and any pensioner who was not in active service on that day shall be entitled to an additional pension of 25 per cent.

(2) The total of the maintenance payment and the additional pension of a pensioner entitled to an additional pension of 30 per cent shall be increased to 500 forints monthly, but not over 75 per cent of his wages received while in service.

*Art. 39.* An orphan's maintenance allowance determined before the coming into force of the present decree-law shall be raised by 25 per cent. The raised amount shall not be less than 100 forints and in case of a total orphan not less than 150 forints monthly.

*Art. 40.* Any person entitled to a pension whose claim became existent before the coming into force of the present decree-law, but who has not exercised his claim prior to the coming into force of the present decree-law, may request before 31 October 1954 that his claim should be dealt with according to the legal provisions obtaining before the coming into force of the present decree-law.

#### MISCELLANEOUS PROVISIONS

*Art. 41.* (1) Any person enjoying an old-age pension, an invalid's pension or an additional pension by virtue of this decree-law shall be bound to report within eight days to the organ making the maintenance payment any entry into active service or earning profession. This report is to be made also by any employer who employs a pensioner.

(2) If the organ making the maintenance payment becomes aware of the entry into service or earning profession of a person enjoying a pension or an addi-

tional pension, the payment shall be suspended for the time of the service or of the exercise of the earning profession without regard to the circumstance whether the report prescribed by para. 1 has been made or not, except in the case in which the pension is due to the pensioner also while in active service (art. 30).

(3) The organ paying the maintenance may oblige any pensioner who has improperly received a pension or an additional pension to pay an indemnity up to double the sum received. This provision shall not affect the penal responsibility of the pensioner.

(4) The manager of the enterprise employing the pensioner or his employee, or both, entitled to act in his behalf shall be jointly and severally responsible for the indemnity, if the undue receipt of the pension or additional pension was made possible by omission to make the report whose rendering was obligatory upon the enterprise.

(5) A suspensive appeal may be lodged against a decision imposing an indemnity arrived at by the organ paying the maintenance (art. 35).

*Art. 42.* (1) This decree-law enters into force on 1 October 1954.

(2) The contribution to be paid by a worker by reason of the present decree-law shall be deducted for

the first time from the wages due for the month of October 1954.

(3) To a pensioner whose service ceases after 30 June 1954, the additional pension shall be paid on his demand for the first time from the first day of the month following the cessation of his service but not before 1 October 1954.

(4) To any pensioner who is not in service on 30 September 1954, and does not fall under the provisions of para. 3, the additional pension shall be paid from 1 November 1954, at the earliest.

*Art. 43.* The Council of Ministers shall be empowered to fix the detailed and provisional legal provisions concerning the execution of this decree-law in accordance with the principles defined herein, to extend certain provisions of the decree-law to persons to whom it does not otherwise apply and to issue different provisions concerning the members of the armed forces, having regard, however, to the general principles of the decree-law.

*Art. 44.* With the coming into force of this decree-law, the decree-laws No. 30 of 1951<sup>1</sup> and No. 8 of 1954 shall lose legal force.

<sup>1</sup> See *Yearbook on Human Rights for 1951*, pp. 131-134.

## INTERNATIONAL AGREEMENTS

In 1954, Hungary ratified the Geneva Conventions for the Protection of Victims of War of 12 August 1949.<sup>1</sup> Decree-law No. 32/1954, on the legal force of the conventions in the Hungarian People's Republic was published in *Magyar Közlöny* No. 95, of 26 November 1954.

<sup>1</sup> See *Yearbook on Human Rights for 1949*, pp. 299-309.



## ICELAND

### NOTE<sup>1</sup>

No amendments to the Constitution were made in 1954, and there was no legislation entailing substantial changes so far as human rights are concerned.

In the course of 1954 Iceland became a party to the Convention for the Protection of Human Rights and Fundamental Freedoms (cf. notice No. 11, of 9 Feb-

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<sup>1</sup> Note prepared by Professor Olafur Jóhannesson of the University of Iceland, Reykjavik, government-appointed correspondent of the *Yearbook on Human Rights*. English translation from the Icelandic text by the United Nations Secretariat.

ruary 1954). Mention may also be made of the Convention between Iceland, Denmark, Norway and Sweden on the reciprocal transfer of members of sick funds and on sick benefits during temporary residence (cf. notice No. 14, of 10 February 1954), the Convention between Iceland, Denmark, Finland, Norway and Sweden on reciprocity in regard to the payment of benefits for reduced earning capacity (cf. notice No. 15, of 10 February 1954), and the convention between Iceland, Denmark, Finland, Norway and Sweden on reciprocal maternity grants (cf. notice No. 16, of 10 February 1954).

## INDIA

### NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS<sup>1</sup>

#### I. LEGISLATIVE ENACTMENTS

Certain important measures in the sphere of human rights which were passed in the year 1954 are mentioned below, the rights involved being concisely indicated.

##### A. CERTAIN ASPECTS OF FAMILY RIGHTS

###### *The Special Marriage Act, 1954*<sup>2</sup>

(Act No. 43 of 1954)

This Act, which has been passed by the Parliament of India, provides a special form of marriage in certain cases and replaces an earlier enactment on the subject, namely, the Special Marriage Act of 1872 (Act No. III of 1872). The parties to a marriage solemnized under this Act may observe any ceremonies for its solemnization, but certain formalities have been prescribed for the completion of the marriage after the observance of which a certificate of marriage is to be entered by the marriage officer appointed under the Act in a book kept for the purpose to be called the Marriage Certificate Book. The important changes introduced by this Act are set out hereunder.

The special form of marriage provided by this Act can be availed of by any person in India, and by all citizens of India who may for the time being be outside India, irrespective of the faith which either party to the marriage may profess. The Act does not extend to the State of Jammu and Kashmir.

Provision has also been made for the registration of marriages other than those solemnized under this Act or the Act of 1872 by the marriage officers appointed for the purpose so as to enable the parties to such marriages to avail themselves of the benefits conferred by this Act. No application for such registration will, however, be entertained unless it is signed by both the parties to the marriage. It has been further provided that once a marriage is so registered, all children born after the date of the ceremony of such marriage shall be regarded as always having been the legitimate children of their parents.

The Act also contains provisions with regard to restitution of conjugal rights, judicial separation, void and voidable marriages, and divorce. A special provision for divorce by mutual consent which is new of

its kind has been included in the Act. Under this provision a petition for divorce may be presented by both the parties together on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved. If after the presentation of such petition a motion is made by both the parties not earlier than one year after the date of the presentation of the petition and not later than two years after that date, the court shall, on being satisfied, after hearing the parties and after making such inquiries as it thinks fit, that a marriage has been solemnized under the Act of 1954 and that the averments in the petition are true, pass a decree declaring the marriage to be dissolved with effect from the date of the decree. The Act further contains a provision restricting the presentation of petitions for divorce during the first three years after marriage except for special reasons so as to give the parties a full opportunity to make the marriage a success.

Provision has been also made in the Act for the appointment of diplomatic or consular officers as marriage officers for the benefit of Indian citizens abroad.

##### B. PERSONAL FREEDOM

###### 1. *The Abducted Persons (Recovery and Restoration) Amendment Act, 1954*<sup>3</sup>

(Act No. 4 of 1954)

After the partition of India in 1947, disturbances of a communal nature broke out in the Dominions of India and Pakistan, and a large number of persons were abducted on both sides. Steps were thereafter taken by the governments of the two dominions to recover and restore the abducted persons. As a result of negotiations between the representatives of the two Governments, an agreement was reached on 11 November 1948 which provided, *inter alia*, that each dominion would be responsible for the recoveries to be made within its own territory, and that the recovered persons were to be taken first to a transit camp, then moved on to a base camp and finally restored to their relatives in the other dominion after inquiry.<sup>4</sup> In pursuance of this agreement, the Abducted Persons (Recovery and Restoration) Act, 1949<sup>5</sup> (Act

<sup>3</sup> Published in the *Gazette of India*, Extraordinary, part II, section 1, p. 85, of 27 February 1954.

<sup>4</sup> A further agreement between India and Pakistan on recovery of abducted persons which was signed in New Delhi on 8 May 1954 came into force on 23 June 1954.

<sup>5</sup> Published in the *Gazette of India*, Extraordinary, part II, section 1, pp. 203-205, of 30 December 1949.

<sup>1</sup> Note prepared by Mr. S. N. Mukerjee, Secretary, Council of States, New Delhi, government-appointed correspondent of the *Tearbook on Human Rights*.

<sup>2</sup> Published in the *Gazette of India*, Extraordinary, part II, section 1, pp. 301-321, of 11 October 1954.

No. LXV of 1949), was enacted by the then Dominion Legislature of India regulating the procedure for the recovery and restoration of women and children abducted. This Act extended to the present States of Uttar Pradesh, Punjab, Patiala and East Punjab States Union and Rajasthan and was to remain in force up to 31 October 1951. Subsequently, the provisions of this Act were extended to Delhi, and its life was also extended up to 31 October 1952 by the Abducted Persons (Recovery and Restoration) Amendment Act, 1952<sup>1</sup> (Act No. VII of 1952), passed by the Parliament of India. To enable the work of recovery to be continued, the life of the Act of 1949 was further extended up to 28 February 1954 by the Abducted Persons (Recovery and Restoration) Amendment Act, 1952<sup>2</sup> (Act No. LXXVII of 1952), which was also passed by Parliament, and certain amendments which were considered necessary in the light of experience gained in the working of the parent Act were made in the parent Act by this amending Act. One of the amendments so made was to enable the recovery staff to effect recovery of abducted persons from any area in which the Act of 1949 was not in operation in the cases where such persons had been removed to that area. In 1954 Parliament passed the Abducted Persons (Recovery and Restoration) Amendment Act, 1954, extending the life of the Act of 1949 for a further period up to 31 May 1955, so that the work of recovery of abducted persons might be continued for some time more.

## 2. *The Preventive Detention (Amendment) Act, 1954*<sup>3</sup> (Act No. 51 of 1954)

This Act, which was passed by the Parliament of India, extended the life of the Preventive Detention Act, 1950<sup>4</sup> (Act No. IV of 1950) which was due to expire on 31 December 1954, for a further period of three years.

### C. POLITICAL RIGHTS

## *The Government of Part C States (Amendment) Act, 1954*<sup>5</sup> (Act No. 7 of 1954)

The Government of Part C States Act, 1951<sup>6</sup> (Act No. XLIX of 1951), which was enacted by the Parliament of India under article 240 of the Constitution, provided for the creation of councils of Ministers and legislative assemblies in certain States specified in Part C of the first schedule to the Constitution. That Act has been amended by the Government of Part C States (Amendment) Act, 1954, passed by Parliament,

in order to modify the provision contained therein with respect to the disqualification of members of the legislative assembly of any of those States and to provide a machinery for deciding questions of disqualification of such members and also to make provisions in respect of certain other matters.

The relevant provision of the Government of Part C States Act, 1951, as amended by the Government of Part C States (Amendment) Act, 1954, is reproduced below.<sup>7</sup>

### D. PUBLIC FREEDOM

## *The Press (Objectionable Matter) Amendment Act, 1954*<sup>8</sup> (Act No. 13 of 1954)

This Act, which was also passed by the Parliament of India, extended the life of the Press (Objectionable Matter) Act, 1951<sup>9</sup> (Act No. LVI of 1951) for a period of two years and also made certain minor amendments in that Act.

### E. SOCIAL AND ECONOMIC RIGHTS

## 1. *The Industrial Disputes (Amendment) Act, 1954*<sup>10</sup> (Act No. 48 of 1954)

The Industrial Disputes Act, 1947 (Act No. XIV of 1947), was amended by the Industrial Disputes (Amendment) Act, 1953<sup>11</sup> (Act No. 43 of 1953), passed by Parliament, so as to include therein provisions for payment of compensation to workers in factories and mines in the event of their lay-off or retrenchment. The Act of 1947 has been further amended by the Industrial Disputes (Amendment) Act, 1954, also passed by Parliament, so as to make the provisions relating to lay-off included therein by the amending Act of 1953 applicable to the plantation industry.

## 2. *The Pepsu Compulsory Primary Education Act, 1954*<sup>12</sup> (Act No. 9 of 1954)

This Act has been passed by the Legislative Assembly of the Patiala and East Punjab States Union conferring power on the State Government to introduce compulsory primary education in areas notified in that behalf. It further provides that where a notification has been issued in relation to any area, it shall be the duty of the guardian of any boy or girl who is not under six and not over twelve years of age residing within such area to cause such boy or girl to

<sup>7</sup> See p. 146.

<sup>8</sup> Published in the *Gazette of India*, Extraordinary, part II, section 1, pp. 113-115, of 26 March 1954.

<sup>9</sup> Published in the *Gazette of India*, Extraordinary, Part II, section 1, pp. 383-393, of 23 October 1951. See *Yearbook on Human Rights for 1951*, p. 145.

<sup>10</sup> Published in the *Gazette of India*, Extraordinary, part II, section 1, p. 418, of 24 December 1954.

<sup>11</sup> Published in the *Gazette of India*, Extraordinary, part II, section 1, pp. 433-439, of 24 December 1953.

<sup>12</sup> Published in the *Pepsu Government Extraordinary Gazette*, part III, section 1, pp. 373-376, of 2 August 1954.

<sup>1</sup> Published in the *Gazette of India*, Extraordinary, part II, section 1, p. 58, of 25 February 1952.

<sup>2</sup> Published in the *Gazette of India*, Extraordinary, part II, section 1, pp. 341-343, of 29 December 1952.

<sup>3</sup> Published in the *Gazette of India*, Extraordinary, part II, section 1, p. 427, of 27 December 1954.

<sup>4</sup> See *Yearbook on Human Rights for 1952*, pp. 113-115.

<sup>5</sup> Published in the *Gazette of India*, Extraordinary, part II, section 1, pp. 93-95, of 22 March 1954.

<sup>6</sup> See *Yearbook on Human Rights for 1951*, pp. 152-153.

attend a primary school unless there is a reasonable ground for not causing such attendance or an exemption has been granted by the state Government in that behalf. The Act also provides for the remission or contribution of fees by the state Government for the education of a boy or girl whose guardian is required to cause his or her attendance at a primary school.

## II. CASE LAW

There have been a number of judicial decisions on questions involving human rights by the Supreme Court of India. Some of these decisions which are considered to be important to the development of human rights are summarized in this *Yearbook*.<sup>1</sup>

<sup>1</sup> See pp. 146-152.

## LEGISLATION

### THE GOVERNMENT OF PART C STATES ACT, 1951, AS AMENDED BY THE GOVERNMENT OF PART C STATES (AMENDMENT) ACT, 1954

#### 17. *Disqualifications for membership*

(1) A person shall be disqualified for being chosen as, and for being, a member of the legislative assembly of a State, if he is for the time being disqualified for being chosen as, and for being, a member of either house of Parliament under any of the provisions of article 102<sup>1</sup> or of any law made in pursuance of that article.

<sup>1</sup> In accordance with section 2 of the Act (see *Yearbook on Human Rights for 1951*, p. 152), "article 102" here signifies article 102 of the Constitution of India, which is quoted in *Yearbook on Human Rights for 1949*, p. 105.

(2) If any question arises as to whether a member of the legislative assembly of a State has become disqualified for being such a member under the provisions of sub-section (1), the question shall be referred for the decision of the President and his decision shall be final.

(3) Before giving any decision on any such question, the President shall obtain the opinion of the Election Commission and shall act according to such opinion.

...

## JUDICIAL DECISIONS

### WHETHER ISSUE OF PERMITS TO SMALLER TAXIS TO PLY AT CHEAPER RATES AMOUNTS TO DENIAL OF EQUAL PROTECTION OF THE LAWS OR INFRINGES THE RIGHT OF EXISTING PERMIT-HOLDERS TO CARRY ON OCCUPATION—CONSTITUTION OF INDIA, ARTICLES 14 AND 19(1)(g)

HARMAN SINGH AND OTHERS *v.* THE REGIONAL TRANSPORT AUTHORITY, CALCUTTA, AND OTHERS

*Supreme Court of India*<sup>1</sup>

24 November 1953

*The facts.* The Regional Transport Authority, Calcutta Region, issued a notification dated 13 May 1952 inviting applications for the issue of permits for small taxi-cabs of not below 10 h.p. and not above 19 h.p. Under the Bengal Motor Vehicles Rules issued under the Motor Vehicles Act, 1940, taxis plying in the streets of Calcutta were required to be not below 22 h.p. and not above 30 h.p. and rule 179 of the said rules, which prescribed the tariff for all such taxis, was in the following terms immediately before the issue of the said notification—namely:

"A minimum charge of one rupee for the first mile

or part thereof and annas two for every one-sixth of each subsequent mile. Waiting charges Re. 1-14-0 per hour or annas two for every four minutes. All charges to be shown on the meter. Cabs returning empty to be paid annas four per mile up to the boundary."

After the issue of the said notification dated 13 May 1952, another notification was issued on 7 June 1952, making the following amendment to the said rule 179—namely:

"To the said rule add the following proviso:

"Provided that in the case of small motor-cabs of not exceeding 19 h.p. but not below 10 h.p., regis-

<sup>1</sup> Report (1954) S.C.R. 371.

tered under the Motor Vehicles Act, 1939, in the city of Calcutta or in the district of 24 Parganas the tariff on each occasion of hiring shall for a period of 8 months with effect from 1st May, 1952, be annas eight for the first mile or part of a mile and annas two for every quarter of each subsequent mile.”

After considering the applications received for the issue of permits for small taxis in pursuance of the notification dated 13 May 1952 and hearing objections to the issue of such permits, the Regional Transport Authority issued forty-eight permits for small taxis.

As a result of the issue of the notification dated 7 June 1952, the tariff for small taxis was fixed at the rate of eight annas for the first mile or part of a mile and two annas for every quarter of each subsequent mile, while the tariff for large taxis remained as before—namely, one rupee for the first mile and two annas for every one-sixth of each subsequent mile. In view of this disparity between the tariffs of the two classes of taxi, the owners of large taxis became apprehensive that their occupation would be seriously affected by the introduction of small taxis. The appellants thereupon filed a petition under article 226 of the Constitution in the High Court at Calcutta on 21 October 1952 against the Regional Transport Authority and the forty-eight permit-holders praying for a writ of prohibition restraining the Regional Transport Authority from giving effect to the notification of 7 June 1952 and from permitting or authorizing small taxis to ply in the streets of Calcutta on the ground that the said notification infringed the fundamental rights guaranteed to them under articles 14 and 19(1)(g) of the Constitution.<sup>1</sup> The High Court at Calcutta held that there was no violation of the fundamental rights guaranteed under articles 14 and 19(1)(g) of the Constitution and dismissed the petition. Thereupon the petitioners appealed to the Supreme Court of India under article 132(1) of the Constitution.

*Held.* That the appeal should be dismissed. It was in the interests and for the benefit of a section of the public that small taxis had been introduced and cheaper rates had been fixed having regard to the size, horsepower and expenses of running such taxis. The introduction of small taxis was thus based on a rational classification, and the issue of permits to such taxis to ply at cheaper rates did not amount to a denial of the equal protection of the laws, and as such there was no infringement of article 14 of the Constitution. There was also no infringement of article 19(1)(g).

<sup>1</sup> Articles 14 and 19(1)(g) of the Constitution read as follows:

“Art. 14. The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”

“Art. 19. (1) All citizens shall have the right:

...

(g) To practise any profession, or to carry on any occupation, trade, or business.”

of the Constitution, as the permit-holders of bigger taxis has not been prevented from carrying on their occupation. Article 19(1)(g) declared that all citizens have the right to practise any profession or to carry on any occupation, trade or business, but did not guarantee a monopoly to a particular individual or association to carry on any occupation. If other persons were allowed to carry on the same occupation and an element of competition was introduced in the business, that did not, in the absence of any bad faith on the part of the authorities, amount to an infringement of the fundamental right guaranteed under article 19(1)(g).

The Court said:

“The only point for consideration in the appeal is whether the issue of licences to small taxi-cabs between 10 and 19 h.p. to ply in the streets of Calcutta and the fixation of lower rates of tariff for this class of taxi than that prescribed for taxis between 22 and 30 h.p. violates the fundamental rights of the appellants who are owners of taxi-cabs between 22 and 30 h.p., under articles 14 and 19(1)(g) of the Constitution. In our judgement, this question can be answered only in the negative. It has been repeatedly pointed out by this court that in construing article 14 the courts should not adopt a doctrinaire approach which might well choke all beneficial legislation, and that legislation which is based on a rational classification is permissible. A law applying to a class is constitutional if there is sufficient basis or reason for it. In other words, a statutory discrimination cannot be set aside as the denial of equal protection of the laws if any state of facts may reasonably be conceived to justify it. It is clear that it is in the interests and for the benefit of a section of the public that small taxis have been introduced and cheaper rates have been fixed having regard to the size, horsepower and expenses of running such cars. We are unable to see any unreasonableness in this classification or any discrimination which infringes the provisions of article 14 of the Constitution. The contention of Mr. Choudhry, therefore, that the introduction of smaller taxis at lesser tariff rates contravenes article 14 of the Constitution cannot be upheld.

“The next contention of Mr. Choudhry, that the introduction of small taxis in the streets of Calcutta will bring about a total stoppage of the existing motor taxi-cab business of large taxi owners in a commercial sense and would thus be an infringement of the fundamental right guaranteed under article 19(1)(g) of the Constitution is again without force. Article 19(1)(g) declares that all citizens have the right to practise any profession, to carry on any occupation, trade or business. Nobody has denied to the appellants the right to carry on their own occupation and to ply their taxis. This article does not guarantee a monopoly to a particular individual or association to carry on any occupation, and if other persons are also allowed the right to carry on the same occupation and an element of competition is introduced

in the business, that does not, in the absence of any bad faith on the part of the authorities, amount to a violation of the fundamental right guaranteed under article 19(1)(g) of the Constitution. Under the Motor Vehicles Act it is in the discretion of the Regional Transport Authority to issue permits at different rates of tariff to different classes of vehicles plying in the streets of Calcutta and if that power is exercised in a *bona fide* manner by the Regional Trans-

port Authority for the benefit of the citizens of Calcutta, then the mere circumstance that by grant of licence at different tariff rates to holders of different taxis and different classes of vehicles some of the existing licence holders are affected cannot bring the case under article 19(1)(g) of the Constitution.

"For the reasons given above this appeal has no merits and we accordingly dismiss it with costs."

## RIGHT TO PERSONAL FREEDOM—VALIDITY OF PREVENTIVE DETENTION—PREVENTIVE DETENTION ACT, 1950—CONSTITUTION OF INDIA, ARTICLE 22

SHIBBAN LAL SAKSENA *v.* THE STATE OF UTTAR PRADESH AND OTHERS

*Supreme Court of India*<sup>1</sup>

3 December 1953

*The facts.* On 5 January 1953, the petitioner, Shibban Lal Saksena, was arrested under an order of the district magistrate of Gorakhpur directing the detention of the petitioner in the custody of the superintendent, district jail, Gorakhpur, under sub-clauses (ii) and (iii) of clause (a) of sub-section (1) of section 3 of the Preventive Detention Act, 1950, as amended. On 7 January 1953, the grounds of detention were communicated to the petitioner, and they were divided into two categories, one falling under sub-clause (ii) of the said clause (a) and the other under sub-clause (iii) of that clause. The first ground falling under sub-clause (iii) was to the effect that the detenu, in course of the speeches delivered by him at Ghugli on different dates, exhorted and enjoined upon the cane-growers of that area not to supply sugar-cane to the sugar-mills or even to withhold supplies from them, and thereby interfered with the maintenance of supply of sugar-cane essential to the community. The other ground was that the petitioner used expressions so as to incite the cane-growers and the public to violence against established authority and to defiance of lawful orders and directions issued by government officers, and thereby seriously prejudiced the maintenance of public order. On 3 February 1953, the petitioner made a representation against his detention order, and thereupon the Advisory Board constituted under section 8 of the said Act considered his case and after hearing him submitted its report. Thereafter the Government of Uttar Pradesh confirmed the detention order made against the petitioner under sub-clause (ii) of clause (a) of sub-section (1) of section 3 of the said Act, and sanctioned the continuance of his detention, but revoked the order of detention made against him under sub-clause (iii) of the said clause, as the Advisory Board did not uphold his detention under the said sub-clause (iii). The petitioner thereupon applied to the Supreme Court under article 32 of the

Constitution, challenging the legality of the detention order made against him. It was contended by the petitioner that the detention order originally made could not stand as it was based on two grounds, one of which was admitted to be non-existent or irrelevant and, being of such a nature, the whole order was vitiated, for the bad ground must have operated to a great extent on the mind of the detaining authority while issuing the order. It was further contended that the particulars which were supplied to the petitioner in connexion with the second ground on which the detention order had been continued were inadequate and were not sufficient to enable him to make an effective representation against the order of detention.

*Held.* That the petition should be allowed and the petitioner should be set at liberty. The original order made on 5 January 1953 under clause (a) of sub-section (1) of section 3 of the Preventive Detention Act, 1950, was not sustainable in law. The power to issue a detention order under section 3 of the Act depended entirely upon the satisfaction of the appropriate authority specified in that section. The sufficiency of the grounds upon which such satisfaction purported to be based, provided they had a rational probative value and were not extraneous to the scope or purpose of the legislative provision, could not be challenged in a court of law except on the ground of *mala fides*. Where, however, the Government had admitted that one of the two grounds upon which the original order of detention was made was unsubstantial or non-existent and could not be made a ground of detention, the other ground which still remained could not be said to be sufficient to sustain the order, for to say this would be to substitute an objective judicial test for the subjective decision of the executive authority which was against the legislative policy underlying the statute. Under section 11 of the Preventive Detention Act, 1950, the Government could either confirm the detention order made under section 3 or

<sup>1</sup> Report (1954) S.C.R. 418.

revoke it completely, and there was nothing in law which prevented the Government from making a fresh order of detention if it so desired. What the Government had done in this case was to confirm the detention order and at the same time to revoke it under one of the sub-clauses of clause (a) of sub-section (1) of section 3 of the Act. This was not in conformity with the provisions of section 11 of the Act.

The contention of the petitioner that the particulars supplied to him were inadequate was not accepted.

The Court said:

"We may say at once that the second contention does not impress us. It is true that the sufficiency of the particulars conveyed to a detenu in accordance with the provision embodied in article 22(5) of the Constitution<sup>1</sup> is a justiciable issue, the test being whether they are sufficient to enable the detenu to make an effective representation; but we are not satisfied that the particulars supplied to the detenu in the present case are really inadequate and fall short of the constitutional requirement. We do not think, therefore, that there is any substance in this contention.

"The first contention raised by the learned counsel raises, however, a somewhat important point which requires careful consideration. It has been repeatedly held by this court that the power to issue a detention order under section 3 of the Preventive Detention Act depends entirely upon the satisfaction of the appropriate authority specified in that section. The sufficiency of the grounds upon which such satisfaction purports to be based, provided they have a rational probative value and are not extraneous to the scope or purpose of the legislative provision, cannot be challenged in a court of law, except on the ground of *mala fides*.<sup>2</sup> A court of law is not even competent to inquire into the truth or otherwise of the facts which are mentioned as grounds of detention in the communication to the detenu under section 7 of the Act. What has happened, however, in this case is somewhat peculiar. The Government itself, in its communication dated the 13th of March 1953, has plainly admitted that one of the grounds upon which the original order of detention was passed is unsubstantial or non-

existent and cannot be made a ground of detention. The question is whether in such circumstances the original order made under section 3(1)(a) of the Act can be allowed to stand. The answer, in our opinion, can only be in the negative. The detaining authority gave here two grounds for detaining the petitioner. We can neither decide whether these grounds are good or bad, nor can we attempt to assess in what manner and to what extent each of these grounds operated on the mind of the appropriate authority and contributed to the creation of the satisfaction on the basis of which the detention order was made. To say that the other ground, which still remains, is quite sufficient to sustain the order, would be to substitute an objective judicial test for the subjective decision of the executive authority which is against the legislative policy underlying the statute. In such cases, we think, the position would be the same as if one of these two grounds was irrelevant for the purpose of the Act or was wholly illusory, and this would vitiate the detention order as a whole. This principle, which was recognized by the Federal Court in the case of *Kesbav Talpade v. the King-Emperor*<sup>3</sup> seems to us to be quite sound and applicable to the facts of this case.

"We desire to point out that the order which the Government purported to make in this case under section 11 of the P.D. Act is not one in conformity with the provision of the section. Section 11 lays down what action the Government is to take after the Advisory Board has submitted its report. If in the opinion of the Board there is sufficient reason for the detention of a person, the Government may confirm the detention order and continue the detention for such period as it thinks proper. On the other hand, if the Advisory Board is of opinion that there is no sufficient reason for the detention of the person concerned, the Government is in duty bound to revoke the detention order. What the Government has done in this case is to confirm the detention order and at the same time to revoke it under one of the sub-clauses of section 3(1)(a) of the Act. This is not what the section contemplates. The Government could either confirm the order of detention made under section 3 or revoke it completely, and there is nothing in law which prevents the Government from making a fresh order of detention if it so chooses. As matters stand, we have no other alternative but to hold that the order made on the 5th of January 1953 under section 3(1)(a) of the Preventive Detention Act is bad in law and the detention of the petitioner is consequently illegal. The application is allowed and the petitioner is directed to be set at liberty."

<sup>1</sup> This provision of the Constitution reads:

"22.(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order."

<sup>2</sup> Vide *the State of Bombay v. Atma Ram Stridhar Vaidya*, 1951 S.C.R. 167.

<sup>3</sup> 1943 F.C.R. 88.



RIGHT TO CARRY ON TRADE OR BUSINESS—RESTRICTIONS THEREON—  
VALIDITY OF LAW IMPOSING LICENCE FEE BY PUBLIC AUCTION—  
CONSTITUTION OF INDIA, ARTICLES 14 AND 19 (6)

COOVERJEE B. BHARUCHA v. THE EXCISE COMMISSIONER AND THE CHIEF  
COMMISSIONER, AJMER, AND OTHERS

*Supreme Court of India*<sup>1</sup>

13 January 1954

*The facts.* On 16 March 1953, the Collector of Excise, Ajmer, held an auction sale of Chang Gate Country Liquor Shop, Beawar, for the year 1953-54 in accordance with the rules made under the Ajmer excise regulation I of 1915. The petitioner, who was the previous licensee and Chhoga Lal, one of the respondents, offered bids at the auction sale. Chhoga Lal was declared the highest bidder and the petitioner thus became unsuccessful in obtaining the contract for the liquor shop which he had been running heretofore. Under the auction rules, half of the auction price was payable immediately on the provisional acceptance of the bid. Chhoga Lal, whose bid was in the sum of Rs. 57,000/- deposited Rs. 16,500/- on 16 March 1953, and the balance of Rs. 12,000/- on 18 March 1953—i.e., two days after the due date, in contravention of the provisions of the auction rules, but in spite of this the sale was ultimately confirmed in his favour by the Minister of Excise.

The petitioner represented to the Collector of Excise that the sale should not be confirmed in favour of Chhoga Lal, as he had failed to deposit the auction price in accordance with the rules and intimated his willingness to take the licence on the price fetched at the auction sale. He also presented an appeal to the Chief Commissioner against the order of the Collector permitting the deposit of Rs. 12,000/- to be made after the due date and in not ordering a resale. His representation and appeal were both rejected. He thereupon filed a petition before the Supreme Court under article 32 of the Constitution praying for a writ of *mandamus* or a writ in the nature thereof or a direction or order prohibiting the levy of any duty or fee for the purpose of raising revenues for the benefit of the State by holding auction sales and the grant of monopoly in the trade to a selected few individuals, and directing the authorities to grant licences freely on application and to grant a licence to the petitioner for the country liquor shop in question. In the alternative, the petitioner asked for a *mandamus* directing the officer concerned either to confirm the next lower bid of the petitioner and to grant the licence for the liquor shop in question in his favour, or to hold a fresh auction in accordance with the auction rules and to cancel the licence issued in favour of the respondent Chhoga Lal. The petitioner contended, *inter alia*:

(1) That the petitioner's fundamental right to carry on trade or business in liquor under article 19(1)(g) of the Constitution<sup>2</sup> had been infringed by the act of the Collector of Excise in condoning the failure of the respondent Chhoga Lal in depositing the whole of the security deposit required under the auction rules within the prescribed time and in not re-auctioning the licence under those rules;

(2) That in allowing Chhoga Lal to make the deposit after the expiry of the prescribed time the Collector had discriminated between the petitioner and Chhoga Lal and had thus abridged the petitioner's fundamental right under article 14 of the Constitution;<sup>3</sup> and

(3) That the provisions of the excise regulation and the auction rules made thereunder were *ultra vires*, as the same purport to grant monopoly of trade to a few persons and are thus inconsistent with article 19(1)(g) of the Constitution, and that the provisions of the regulation regarding levy of licence fee with the avowed object of raising a big source of revenue also seriously affected the fundamental right of the petitioner under article 19(1)(g) of the Constitution.

*Held.* That the petition should be dismissed. The nature of the business was an important factor in determining the reasonableness of the restrictions which may be imposed under article 19(6) of the Constitution<sup>4</sup> on the exercise of the right conferred by article 19(1)(g) thereof to carry on any trade or business. There was no inherent right in a citizen to

<sup>2</sup> This provision is quoted above, on p. 147, note 1.

<sup>3</sup> Quoted above, on p. 147, note 1.

<sup>4</sup> "19(6). Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevents the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to

(i) The professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

(ii) The carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise."



sell intoxicating liquors by retail. The right of a citizen to carry on any lawful trade or business was subject to such reasonable restrictions as may be deemed by the governing authority of the country essential to the safety, health, peace, order and morals of the community. The provisions of the Ajmer excise regulation (I of 1915) could not be open to attack on the ground that they create monopoly rights. Elimination and exclusion from business was inherent in the nature of liquor business and it would not be proper to apply to such a business principles applicable to trades which all can carry. When a contract is thrown open to public auction at which every member of the public who wishes to carry on trade in liquor is invited to make bids, it could not be said that there was exclusion of competition and thereby a monopoly was created. The contention of the petitioner that the provisions of the regulation were unconstitutional as they abridged his rights to carry on liquor trade freely could therefore not be upheld. The remedy for any breach of the rules framed under the regulation was provided in the regulation itself. Mere irregularities committed in conducting the auction sale could not be said to have abridged the petitioner's fundamental rights.

The Court said:

"Article 19(1)(g) of the Constitution guarantees that all citizens have the right to practise any profession or to carry on any occupation or trade or business, and clause (6) of the article authorizes legislation which imposes reasonable restrictions on this right in the interests of the general public. It was not disputed that in order to determine the reasonableness of the restriction regard must be had to the nature of the business and the conditions prevailing in that trade. It is obvious that these factors must differ from trade to trade and no hard and fast rules concerning all trades can be laid down. It can also not be denied that the State has the power to prohibit trades which are illegal or immoral or injurious to the health and welfare of the public. Laws prohibiting trades in noxious or dangerous goods or trafficking in women cannot be held to be illegal as enacting a prohibition and not a mere regulation. The nature of the business is therefore an important element in deciding the reasonableness of the restrictions. The right of every citizen to pursue any lawful trade or business is obviously subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, order and morals of the community. Some occupations by the noise made in their pursuit, some by the odours they engender, and some by the dangers accompanying them, require regulations as to the locality in which they may be conducted. Some, by the dangerous character of the articles used, manufactured or sold, require also special qualifications in the parties permitted to use, manufacture or sell them. These propositions were not disputed, but it was urged that there was something wrong in principle and ob-

jectionable in similar restrictions being applied to the business of selling by retail, in small quantities, spirituous and intoxicating liquors. It was urged that their sale should be without restriction; that every person has a right which inheres in him—i.e., a natural right to carry on trade in intoxicating liquors—and that the State had no right to create a monopoly in them. This contention stands answered by what Field, J. said in *Crowley v. Christensen*:<sup>1</sup>

"There is in this position an assumption of a fact which does not exist—that when the liquors are taken in excess the injuries are confined to the party offending. The injury, it is true, first falls upon him in his health, which the habit undermines; in his morals, which it weakens; and in the self-abasement which it creates. But as it leads to neglect of business and waste of property and general demoralization, it affects those who are immediately connected with and dependent upon him. By the general concurrence of opinion of every civilized and Christian community, there are few sources of crime and misery to society equal to the dram shop, where intoxicating liquors, in small quantities, to be drunk at the time, are sold indiscriminately to all parties applying. The statistics of every State show a greater amount of crime and misery attributable to the use of ardent spirits obtained at these retail liquor saloons than to any other source. The sale of such liquors in this way has therefore been, at all times, by the courts of every State, considered as the proper subject of legislative regulation. Not only may a licence be exacted from the keeper of the saloon before a glass of his liquors can be thus disposed of, but restrictions may be imposed as to the class of persons to whom they may be sold, and the hours of the day, and the days of the week, on which the saloons may be opened. Their sale in that form may be absolutely prohibited. It is a question of public expediency and public morality, and not of federal law. The police power of the State is fully competent to regulate the business—to mitigate its evils or to suppress it entirely. There is no inherent right in a citizen thus to sell intoxicating liquors by retail; it is not a privilege of a citizen of the State or of a citizen of the United States. As it is a business attended with danger to the community, it may, as already said, be entirely prohibited, or be permitted under such conditions as will limit to the utmost its evils. The manner and extent of regulation rest in the discretion of the governing authority. That authority may vest in such officers as it may deem proper the power of passing upon applications for permission to carry it on, and to issue licences for that purpose. It is a matter of legislative will only."

"These observations have our entire concurrence and they completely negative the contention raised on behalf of the petitioner. The provisions of the regulation purport to regulate trade in liquor in all its different spheres and are valid.

<sup>1</sup> 34 Law. Edn. 620, 623.

"The contention that the effect of some of these provisions is to enable Government to confer monopoly rights on one or more persons to the exclusion of others and that creation of such monopoly rights could not be sustained under article 19(6) is again without force. Reliance was placed on the decision in *Rasbi Ahmad v. Municipal Board of Kairana*.<sup>1</sup> That decision is no authority for the proposition contended for. Elimination and exclusion from business is inherent in the nature of liquor business, and it will hardly be proper to apply to such a business principles applicable to trades which all could carry. The provisions of the regulation cannot be attacked merely on the ground that they create a monopoly. Properly speaking, there can be a monopoly only when a trade which could be carried on by all persons is entrusted by law to one or more persons to the exclusion of the general public. Such, however, is not the case with the business of liquor. Reference in this connexion may be made to the observations of Lord Porter in *Commonwealth of Australia v. Bank of New South Wales*.<sup>2</sup> This is what his Lordship said:

"Yet about this as about every other proposition in this field a reservation must be made. For their Lordships do not intend to lay it down that in no circumstances would exclusion of competition so as to create a monopoly either in a state or commonwealth agency or in some other body be justified. Every case must be judged on its own facts and in its own setting of time."

Further, it seems to us that this argument suffers from

<sup>1</sup> 1950 S.C.J. 324.

<sup>2</sup> 1950 A.C. 235.

a fallacy. Under the rules, every member of the public who wishes to carry on trade in liquor is invited to make bids. This is the only method by which carrying on of liquor trade can be regulated. When the contract is thrown open to public auction, it cannot be said that there is exclusion of competition and thereby a monopoly is created. For all these reasons we are of opinion that the contention that the provisions of the regulation are unconstitutional as they abridge the rights of the petitioner to carry on liquor trade freely cannot be sustained.

...

"As regards the other contentions of the learned counsel, it is sufficient to say that if there has been any breach of the rules framed under the regulation by the officers concerned, the remedy for such breaches is provided for in the regulation itself. Mere irregularities committed in conducting an auction sale cannot be said to have abridged the petitioner's fundamental rights, and so article 32 is not attracted. It is open to the petitioner under article 226 to approach the High Court for a *mandamus* if the officers concerned have conducted themselves not in accordance with law or if they have acted in excess of their jurisdiction. The same is the answer to the petitioner's next contention that the sale could not be confirmed by the Minister and that under the rules it was only the Chief Commissioner who was authorized to confirm it. The point of discrimination was not seriously argued before us.

"For the reasons given above we see no validity in this application and we accordingly dismiss it with costs."

# IRAQ

## PRESS DECREE No. 24 OF 1954<sup>1</sup>

[Articles 1 and 2 contain definitions.]

*Art. 3. (a)* The editor of a periodical or newspaper:

- (1) Must be an Iraqi national or a person who has been a naturalized Iraqi for not less than ten years;
- (2) Must be over twenty-five years of age;
- (3) Must be of good behaviour and must not have been convicted of a crime or of a misdemeanour of a dishonourable nature;
- (4) Must not have claimed, before an Iraqi or foreign authority, the nationality or protection of a foreign State;
- (5) Must not be in the service of a foreign power;
- (6) Must be a graduate of an Iraqi high school or of a foreign high school approved in Iraq, or hold a licence issued by an approved religious authority in the case of an Islamic periodical or newspaper, or have been authorized by the competent religious authority if the periodical or newspaper pertains to another religious denomination;
- (7) Must reside in the place where the periodical or newspaper is issued;
- (8) Must not be a civil servant or an employee of any public or quasi-public body or, in the case of a political newspaper or periodical, a member of Parliament.

*(b)* No one may be the editor of more than one periodical or newspaper at one and the same time.

*(c)* The owner of a periodical or newspaper:

- (1) Must be over twenty-five years of age;
- (2) Must be of good behaviour and must not have been convicted of a crime or of a misdemeanour of a dishonourable nature;
- (3) Must reside in the place where the publication is issued;
- (4) Must not be a civil servant or an employee of any public or quasi-public body;
- (5) Must own the printing press or satisfy the Minister of the Interior that he possesses ample financial means to operate the newspaper or periodical.

[Articles 4-13 relate to licensing of periodicals and newspapers. Article 5 provides that if the Minister of the Interior is satisfied that an applicant for a licence fulfils all the legal requirements, he shall be granted a licence within thirty days from the date of the application. If the Minister of the Interior has not issued a decree within the period specified, the applicant may issue his publication. Articles 6-13 deal with the financial guarantees required of the publisher before issuing the periodical or newspaper.]

### REVOCATION OF A PERIODICAL OR NEWSPAPER LICENCE

*Art. 14. (a)* A licence to publish a newspaper or periodical shall be revoked:

- (1) If the owner of the newspaper or periodical so requests;
- (2) If the applicant for the licence does not furnish the financial guarantees required by law within the three months following the date on which he is notified that the licence has been granted or the date on which he becomes entitled to issue the publication;
- (3) If the owner of the newspaper or periodical fails to issue it for a period of six consecutive months;
- (4) If it is found that the owner of the newspaper or periodical did not fulfil the conditions prescribed in this ordinance when the licence was granted or when the newspaper or periodical was published;
- (5) If the newspaper or periodical is owned by a company or an association and such company or association ceases to have legal personality;

*(b)* Notice of the revocation of a licence shall be given by means of an order to be made by the Minister of the Interior.

*(c)* The owner of a newspaper or periodical may appeal to the Council of Ministers against a revocation order within the fifteen days following notification thereof. The decision of the Council of Ministers in the matter shall be final.

### PUBLICATION OF A PERIODICAL OR NEWSPAPER BY ALIENS

*Art. 15.* Subject to reciprocity, nationals of foreign States may publish a periodical or a newspaper in Iraq under a licence granted by the Minister of the Interior with the approval of the Council of Ministers.

*Art. 16.* The editor of a newspaper or periodical in respect of which a licence has been granted to an alien shall fulfil the conditions prescribed in this ordinance.

<sup>1</sup> Arabic text in *Official Gazette of the Kingdom of Iraq* No. 3510, of 16 November 1954. Translation from the Arabic text by the United Nations Secretariat.

*Art. 17. (a)* The foreign owner of a publication:

- (1) Must be over twenty-five years of age;
- (2) Must be a graduate of a college recognized in Iraq;

(3) Must not have been convicted in Iraq or abroad of a crime or of a misdemeanour of a dishonourable nature;

- (4) Must be habitually resident in Iraq;

(b) An alien wishing to publish a periodical or a newspaper shall submit an application supported by the documents specified in article 4, duly authenticated in accordance with the law, together with a certificate from his Government's consular or diplomatic representative in Iraq attesting that he is of good conduct and behaviour and that he has not been convicted of any criminal offence.

(c) The applicant shall furnish the financial guarantees required for the publication of a newspaper or periodical in accordance with article 6(b) of this ordinance.

*Art. 18.* An alien may not make his newspaper or periodical the organ of a political party existing in Iraq or abroad.

#### UNLAWFUL PUBLICATIONS

*Art. 19.* A publication may not publish any declaration or statement attributed to the King, the Regent or the Crown Prince without the authorization of the Government.

*Art. 20.* A publication may not publish anything censuring the King for any act of the Government or holding him responsible therefor, or anything likely to create disloyalty to the King, or anything insulting to the King, the Queen or the Crown Prince.

*Art. 21.* Nothing may appear in a publication which is likely

- (1) To incite to a breach of internal or external security or of public order;
- (2) To encourage the commission of offences;
- (3) To instigate disobedience to the laws and regulations or resistance to any legal process;
- (4) To arouse communal hatreds or spread social discord;
- (5) To spread hatred or contempt for any recognized faith;
- (6) To outrage public decency or impair a person's reputation by divulging confidential medical reports;
- (7) To spread false reports or copies of documents which are forged, fabricated or falsely attributed to third parties, such action being calculated to disturb the peace or contrary to the public interest;

(8) To spread reports of a suicide or pictures of a hanging, without the authorization of the Government.

*Art. 22.* A publication may not publish:

(1) Anything reflecting on the dignity or disputing the authority of a judge or magistrate, in relation to a case under consideration by him, or anything insulting to him;

(2) Anything calculated to influence a judge or magistrate in connexion with a case under consideration by him, or to influence the public prosecutor, the lawyers, the examining magistrates or the witnesses in that case, or to prejudice public opinion in favour of one of the parties thereto;

(3) False reports or copies of documents which are forged, fabricated or falsely attributed to third parties in order to influence the administration of justice;

(4) A record of the proceedings in a case which the court has ruled shall be heard in private; the judgement may be published, as well as an outline of the charge or claim. The deliberate publication of distorted records of court proceedings held in public shall be unlawful;

(5) The opinion of a dissenting member of a court which is composed of several judges;

(6) Reports of criminal investigations, if the examining judge has ordered them not to be publicized in any way;

(7) Any arguments or pleadings in a case under consideration by a court, until the final decision is given in that case.

*Art. 23.* A publication may not publish:

(1) records of closed meetings of the Chamber of Deputies or of the Senate, except with the authorization of the President of the Chamber or Senate, or deliberately distorted records of public meetings thereof;

(2) Anything insulting to either of the two Chambers, or to any member thereof in connexion with the performance of his duties as Deputy or Senator.

*Art. 24.* A publication may not publish:

(1) Confidential official correspondence, except with the authorization of the Government;

(2) Agreements and treaties concluded by the Iraqi Government until they are published in the *Official Gazette*, except with the authorization of the Government;

(3) Anything insulting to heads of foreign States, or to any of their diplomatic or consular representatives in Iraq;

(4) Deliberations or decisions of the Council of Ministers, except with the authorization of the Government;

(5) Anything insulting to the Council of Ministers or its President, or any of its members in connexion with the performance of their official duties;

(6) Anything insulting to civil servants or officials of public or quasi-public bodies, in connexion with the performance of their official duties;

(7) Orders for movements of the armed forces, or anything relating to their organization, composition, arms or mobilization, except by special authorization of the Government;

(8) Customs tariffs or decisions of the Higher Supply Board relating to price-control, imports or hard currencies, until publication is authorized;

(9) News calculated to depreciate or to destroy confidence at home or abroad in the national currency or state bonds;

(10) Reports of bankruptcies of merchants, commercial establishments, banks or bankers, except with the authorization of the competent court.

*Art. 25.* A publication may not publish:

(1) Anything affecting a person's dignity or personal freedom, or anything divulging a secret likely to impair a person's fortune, reputation or commercial standing, or anything designed to intimidate a person, to compel him to pay money or render a service to another, or to deprive him of his freedom of action;

(2) the charges or proceedings in libel or defamation actions, in cases in which, by law, proof of the allegations is not admissible.

#### RESPONSIBILITY

*Art. 26. (a)* The editor and the author of the material shall be responsible for the offences specified in this ordinance. They and the owner of the newspaper or periodical shall be jointly and severally liable for any damages to be paid by order of the court which shall constitute a preferential claim on the sum deposited as financial guarantee.

(b) In the case of other publications, the responsibility for the offences provided for in this ordinance or under any other law shall lie with the author, the editor, the publisher and/or the translator, who shall also be jointly and severally liable for any damages to be paid by order of the court.

#### OFFENCES AND PENALTIES

*Art. 27.* The Minister of the Interior may reprimand the editor of a newspaper or periodical if he publishes anything contrary to the provisions of this ordinance. Such reprimand shall be without prejudice to the imposition, on the same grounds, of the legal penalties in respect of the offences specified in this ordinance.

*Art. 28.* Where a periodical or newspaper publishes anything covered by the provisions of article

21, paragraphs (3), (5), (6), (7) and (8), article 23, paragraph (1), article 24, paragraphs (2) and (4), and article 25, paragraph (2), the editor and the author of the material shall be liable to imprisonment for a term not exceeding three months or to a fine not exceeding 150 dinars or to a more severe penalty as prescribed by law.

*Art. 29.* Where a newspaper or periodical publishes anything covered by the provisions of article 21, paragraphs (1), (2) and (4), article 22, article 23, paragraph (2), article 24, paragraphs (1), (3), (5), (6), (8), (9) and (10), and article 25, paragraph (1), the editor and the author of the material shall be liable to imprisonment for a term not exceeding one year or to a fine not exceeding 300 dinars or to a more severe penalty as prescribed by law.

The court may order the suspension of the newspaper or periodical for a period not exceeding one year and the confiscation of the issue of the publication concerned or, if the newspaper or periodical is owned by an alien, the revocation of the licence.

*Art. 30.* Where a newspaper or periodical publishes anything covered by the provisions of article 20 or of article 24, paragraph (7), the editor and the author of the material shall be liable to imprisonment for a term not exceeding two years or to a fine not exceeding one thousand dinars, or to both these penalties, or to a more severe penalty as prescribed by law. The court may order the suspension of the newspaper or periodical for a period not exceeding one year. It shall order the revocation of the licence if the newspaper or periodical is owned by an alien, and the confiscation of the issue of the publication concerned.

...

*Art. 34. (a)* The Minister of the Interior may order the suspension of a newspaper or periodical for a period of one year or the revocation of the licence to publish if he is satisfied that:

(1) The periodical or newspaper is taking a course prejudicial to public decency, as evidenced by the material it publishes or by the number of convictions against it on those grounds;

(2) The periodical or newspaper constitutes a threat to security and public order by reason of the material or reports it publishes inciting to the spread of dissension within the nation, inflaming religious, racial or sectarian fanaticism, or disseminating ideologies prohibited by law;

(3) The periodical or newspaper serves the interests of a foreign State, or has become the means of conveying information to an unfriendly State;

(4) Circumstances and conditions are such that the public interest requires the cancellation of the licence for a newspaper or periodical which is owned by an alien;

(5) A non-political periodical or newspaper has exceeded the terms of its licence.

(6) The owner of the periodical or newspaper may, within the fifteen days following notification of the order of the Minister of the Interior, lodge an objection thereto with the Council of Ministers whose decision in the matter shall be final.

Art. 38. (1) Where a periodical or newspaper has published any material which defames or insults a person, the owner of the periodical or newspaper shall publish, free of charge and in the same place in which the original material appeared, any replies thereto received from the person concerned or his representative or, if the item published concerned a deceased person, from such person's children or grandchildren; he shall also publish the judgement given in any defamation proceedings arising from the said material. The owner of the periodical or newspaper shall publish any replies communicated by the Government to material he has published. If in a case involving defamation he has published an account of the judicial proceedings at the request of the person concerned, he shall also publish the judgement given in that case.

(2) The texts referred to in the foregoing paragraph shall be published, in the same characters and the same column or columns in which the original material appeared, in the first issue of the newspaper or periodical following their receipt, or, if this is not possible, in the issue next following.

(3) If the owner and the editor of a newspaper or periodical contravene any of the provisions of the foregoing two paragraphs, they shall be liable to a fine not exceeding 50 dinars.

(4) If the judgement cannot be published in the same newspaper or periodical, the court may publish it in another and the cost of such publication shall be borne by the person convicted.

Art. 39. The Government may make regulations prescribing the procedure for establishing a press association, defining the conditions of membership, the method of administration and the rights and duties of its members, and regulating its financial affairs.

[Article 42 repeals the Publications Act No. 57 of 1933 as amended by Act No. 33 of 1934.]

## PUBLIC MEETINGS AND DEMONSTRATIONS DECREE

No. 25, of 14 November 1954<sup>1</sup>

### SUMMARY

According to article 2 of this decree, the holding of public meetings is subject only to the limitations laid down in the decree.

Article 3 states that public meetings shall be considered illegal, and their holding shall not be permitted, if the purposes are:

1. To intimidate the Government or the legislative authority or any of the public servants during the performance of their official duties by force or the threat of force;
2. To resist the enforcement by the competent authority of the laws, regulations or other legal instructions, or any legal action, by force or the threat of force;
3. To deprive any person, by force or the threat of force, of the enjoyment of his freedom or property or any right to which he may be entitled under the law;
4. To compel any person, by force or the threat of force, to undertake to perform an act which he is not legally required to do, or to prevent him from performing his legal duties;

5. To assault any person or to bring any damage to him or to violate the sanctity of his property;

6. To incite to mutiny or disobedience, or to arouse fear in the minds of the members of society, or to stir feelings of distrust and hatred among them, or to disturb public security or the general order.

Article 4 states that (a) public meetings shall not be held in public streets; (b) public meetings shall not extend beyond 10 o'clock in the evening unless authorized by the competent administrative officer; (c) loudspeakers shall not be used outside the meeting place.

Article 5 provides that anyone desiring to organize a public meeting must inform in writing, at least two days before the meeting, the *Mutassarif* (Governor of the Province) if the meeting is to be held in his province, or the *qa'mmaqam* (district officer) if it is to be held in his district, or the *mudir* (director) if it is to be held in his quarter, or the nearest administrative officer, if it is to be held in any place other than those stated above.

Article 12 states that (a) the organizers of the meeting or any one of them shall have the right to object,

<sup>1</sup> Arabic text in *Official Gazette of the Kingdom of Iraq* No. 3513, of 18 November 1954. English summary from the Arabic text by the United Nations Secretariat.

without payment of fees, to any order prohibiting the holding of the meeting issued by the Minister of the Interior, within a period not exceeding six days.

(b) The Minister of the Interior shall consider the objection within a period not exceeding three days from the date of filing the objection with him. The decision of the Minister in the matter is final.

(c) If the Minister of the Interior revokes the order against holding the meeting, such revocation will be circulated immediately through available channels and the organizers or any one of them shall be notified accordingly.

(d) If the Minister of the Interior revokes the order against holding the meeting, the organizers of the meeting may then call a meeting within a period not exceeding three days from the time of the publication of the order or its notification. The organizers must inform the *Mutassarif* or *qu'mmaqam*, or *mudir*, within a period not less than twenty-four hours from the time of the meeting.

Article 14 states that (a) if the organizing committee fails to abide by an order issued by the administrative officer to dissolve and to disperse a crowd, or if the crowd refuses to disperse in spite of his request, the administrative officer may use all the available means at his disposal, or the force necessary to disperse them. The use of firearms or dangerous weapons for this purpose shall not be permitted.

(b) If the meeting reaches a stage of anarchy endangering security or public order or the lives or safety of persons, the administrative officer shall order security forces to fire shots in the air in order to compel the crowd to disperse.

(c) Meetings shall be dispersed by the use of firearms by the security forces against the crowds under the conditions stated in the law and in addition under the following circumstances:

1. If the crowd uses dangerous weapons or fires shots at other people or at the security forces or any of their members during the performance of their official duties;
2. If necessary in self-defence or the defence of others;
3. If the crowd undertakes acts of looting and pillage or any act of destruction, or if it storms dwelling places.

Article 15 states that a public meeting shall be con-

sidered an election meeting under the following conditions:

1. If the purpose of the meeting is to nominate one or more candidates to fill parliamentary seats or to elect persons to councils or organizations defined by law; or to hear the candidates' views;
2. If it is limited to the voters and candidates from the electoral district;
3. If it is to be held for electioneering purposes defined by law.

Article 19 provides that the administrative officer shall order the dispersing of a demonstration under the following circumstances:

1. If it is held contrary to the provisions of the decree;
2. If it threatens security and public order;
3. If the demonstrators or any of them carry arms;
4. If a criminal act has been committed during the demonstration;
5. If the demonstrators or any of them make hostile utterances against the system of government, or for the purpose of inciting the public against security and public order, or carry placards of a hostile nature;
6. If more than half of the members of the organizing committee are absent from the demonstration.

Article 20 provides that if public meetings or demonstrations are held without the submission of the notice referred to in article 5 of the decree, the organizers or members of the organizing committee shall be liable to imprisonment for not more than one year or a fine not exceeding 500 dinars or both, and shall also be punished with the same penalties if an order prohibiting the meeting or the demonstration is disregarded.

Article 21 provides that an imprisonment of not more than three months or a fine not exceeding fifty dinars shall be imposed upon any person who participates or continues to participate in a meeting or a demonstration which is prohibited or ordered to be dispersed.

Article 22 repeals the Ottoman Law on Meetings of 10 October 1325 A.H. and the Ottoman Law on Gatherings of 26 Rabi' al-awal 1320 A.H. and 3 March 1328 A.H.



## SETTLEMENT AND ARBITRATION OF LABOUR DISPUTES REGULATION

No. 63 of 1954<sup>1</sup>

## SUMMARY

This regulation makes provisions for the settlement of disputes by conciliation, arbitration or mediation. By "dispute" is meant any dispute between an employer and five or more workmen concerning work or conditions of employment.

A strike or lockout is to be considered illegal unless the Minister of Social Affairs has been properly informed, at least fourteen days before it takes place. Staying in the workshop and preventing the employer

from conducting the work is prohibited. "Strike" is defined as meaning the cessation of work by a body of workmen acting in combination, while "lockout" means any closing of a place of work by the employer, or the cessation by him of work in it, including refusal to continue to employ any number of workmen because of a dispute, the purpose being to compel the workmen to accept certain wages or conditions of employment.

<sup>1</sup> Arabic text in *Official Gazette of the Kingdom of Iraq* No. 3477, of 5 October 1954. Summary by the United Nations Secretariat.

A complete translation of the decree into English and French appears in I.L.O. *Legislative Series*, 1954, Iraq—1.

## PRIVATE AND FOREIGN SCHOOLS REGULATION

No. 67 of 1954<sup>1</sup>

## SUMMARY

According to article 1 of this regulation:

(a) Permission shall be granted for the establishment of a private primary school to any person holding a secondary school diploma or its equivalent, and for the establishment of a secondary school to any graduate of a higher institution. Exception to this rule shall be made in the case of recognized associations, institutions and humanitarian and cultural organizations.

(b) Permission shall be granted for the establishment of a private institute for special studies to the holder of a college diploma or certificate of specialization from an institution comparable to the institute proposed.

(c) The provisions of this regulation shall also apply in the establishment of religious schools, private institutions and Quranic schools of the same level.

(d) The founder of any of these schools must be of good character and reputation, and must not have been sentenced for any crime, or dismissed from his position on moral grounds, or have any leanings or tendencies contrary to religious beliefs or national aims.

Article 2 states that permission for the establishment of a private or foreign school shall only be exercised by those who have secured it, and may not be sold, rented, or awarded to any party or person nor be

transferred to others, unless prior permission is granted by the Ministry of Education.

According to article 12:

(a) The teaching of foreign languages which are not authorized in the private and foreign schools shall be carried on only after approval has been secured from the Ministry of Education. Likewise, the teaching of authorized foreign languages shall not be started in the elementary classes unless approved by the Ministry of Education.

(b) Religious and vernacular instruction shall be given in accordance with the religion and language of the majority of students of the school, provided such instruction shall not lead to a decrease in the number of hours devoted to courses which fall within the ministerial general examinations.

Article 14 provides that (a) private and foreign schools shall be subject to educational, administrative and financial inspection by the Ministry.

(b) The inspector must submit a report concerning the principal of a private and foreign school and his administrative and cultural competence, as well as a general report regarding the teaching staff.

(c) The inspector's report must include reference to all school violations, the distribution of courses among the teaching staff, and the weekly curriculum.

<sup>1</sup> Arabic text in *Official Gazette of the Kingdom of Iraq* No. 3485, of 17 October 1954. English summary from the Arabic text by the United Nations Secretariat.

Article 17 repeals Private and Foreign School Regulation No. 18 of 1953.



# IRELAND

## NOTE<sup>1</sup>

### I. LEGISLATION

The Housing (Amendment) Act, No. 16 of 1954, is designed to continue the policy of encouraging the building of new houses and the reconditioning of existing houses by private individuals and public utility societies, with the assistance of state grants and, where appropriate, supplementary grants from the housing authorities in the various county health districts, county boroughs, boroughs and urban districts.

The Health Act, 1953 (Date of Commencement) Orders 1953 and 1954 were made to bring the provisions of the Health Act, No. 26 of 1953,<sup>2</sup> into operation at various dates between 1 January 1954 and 1 January 1955. Section 2 of the Health Act, No. 23 of 1954, amends section 22 of the Act of 1953 by empowering the Minister for Health to make regulations providing for health services for a particular category of persons only.

The primary purpose of the Red Cross Act, No. 28 of 1954, is to enable effect to be given in Irish domestic law to certain provisions of the four Geneva Conventions of 12 August 1949,<sup>3</sup> which were signed, subject to ratification, on behalf of Ireland on 19 December 1949. It is the invariable Irish practice not to ratify any international agreement until appropriate arrangements have been made in Irish law. Further legislation will require to be enacted before Ireland will be in a position to ratify the 1949 Geneva Conventions.

### II. STATUTORY INSTRUMENTS<sup>4</sup>

- A. 1. High Court (Social Welfare Act, 1952) Rules, 1954 (No. 25 of 1954);
2. Social Welfare (Unemployment Benefit and Miscellaneous Provisions) (Transitional) (Amendment) Regulations, 1954 (No. 124 of 1954);
3. Social Welfare (Overlapping Benefits) (Amendment) Regulations, 1954 (No. 155 of 1954);
4. Social Welfare (Treatment Benefit) Regulations, 1954 (No. 156 of 1954);

<sup>1</sup> This note is based on texts and information received through the courtesy of the Embassy of Ireland, Washington. All legislative texts mentioned in this note were published by the Stationery Office, Dublin.

<sup>2</sup> See a summary of this Act in *Tearbook on Human Rights for 1953*, p. 145.

<sup>3</sup> See *Tearbook on Human Rights for 1949*, pp. 299-309.

<sup>4</sup> The titles which follow are classified into: A. Social Welfare Matters, B. Housing, C. Trade Union Matters and D. Health Matters.

5. Social Welfare (Isle of Man Reciprocal Arrangements) Order, 1954 (No. 203 of 1954);
6. Social Welfare (Unemployment Benefit) (Additional Condition) Regulations, 1954 (No. 264 of 1954);
7. Social Welfare (Unemployment Benefit and Miscellaneous Provisions) (Transitional) (Amendment) (No. 2) Regulations, 1954 (No. 265 of 1954);
8. Social Welfare (Disability Benefit, Marriage Benefit and Maternity Benefit) (Voluntary Contributors) (Transitional) (Amendment) Regulations, 1954 (No. 273 of 1954);
9. Social Welfare (Treatment Benefit) (Transitional) (Amendment) Regulations, 1954 (No. 274 of 1954);
10. Insurance (Intermittent Unemployment) Act, 1942 (Amendment of Rates of Supplementary Benefit) Regulations, 1954 (No. 290 of 1954);
- B. 11. Labourers Cottage (Purchase) (Amendment) Regulations, 1954 (No. 171 of 1954);
12. Housing (Repair and Improvement Works) Regulations, 1954 (No. 200 of 1954);
13. Housing (New Houses) Regulations, 1954 (No. 261 of 1954);
- C. 14. Trade Union Act, 1952 (Section 3) Order, 1954 (No. 199 of 1954);
- D. 15. Health Act, 1953 (Date of Commencement) Order, 1954 (No. 62 of 1954);
16. Consultative Health Committees (Dublin, Cork and Waterford) Regulations, 1954 (No. 73 of 1954);
17. Milk for Mothers and Children Regulations, 1954 (No. 97 of 1954);
18. Maternity and Child Health Services Regulations, 1954 (No. 98 of 1954);
19. Mental Treatment Regulations, 1954 (No. 99 of 1954);
20. General Institutional and Specialist Services Regulations, 1954 (No. 100 of 1954);
21. Boarding Out of Children Regulations, 1954 (No. 101 of 1954);
22. General Medical Services Regulations, 1954 (No. 102 of 1954);
23. Institutional Assistance Regulations, 1954 (No. 103 of 1954);

24. General Institutional and Specialist Services (Temporary) Regulations, 1954 (No. 157 of 1954);
25. General Medical Services (Amendment) Regulations, 1954 (No. 159 of 1954);
26. Health Act 1954 (Date of Commencement) Order, 1954 (No. 160 of 1954);
27. Dublin Public Assistance Authorities (Health Functions) Order, 1954 (No. 162 of 1954);
28. South Cork Board of Public Assistance (Health Functions) Order, 1954 (No. 163 of 1954);
29. Waterford Board of Public Assistance (Health Functions) Order, 1954 (No. 164 of 1954);
30. Cork Sanatoria Board Order, 1953 (Amendment) Order, 1954 (No. 165 of 1954);
31. Western Health Institutions Board Order, 1953 (Amendment) Order, 1954 (No. 166 of 1954);
32. Health (Duties of District Medical Officers) Order, 1954 (No. 168 of 1954);
33. Health (Duties of Midwives) Order, 1954 (No. 169 of 1954);
34. Disabled Persons (Maintenance Allowances) Regulations, 1954 (No. 207 of 1954).

### III. RATIFICATION OF INTERNATIONAL INSTRUMENTS

On 31 March 1954, the Irish Government's Instruments of Ratification of the following four Council of Europe agreements<sup>1</sup> were deposited:

1. European Interim Agreement on Social Security Schemes relating to Old Age, Invalidity and Survivors and Protocol thereto;
2. European Interim Agreement on Social Security other than Schemes for Old Age, Invalidity and Survivors and Protocol thereto;
3. European Convention on Social and Medical Assistance and Protocol;
4. European Convention on the Equivalence of Diplomas leading to Admission to Universities.

<sup>1</sup> For the agreements referred to under 1-3, see *Yearbook on Human Rights for 1953*, pp. 355-361.

# ISRAEL

## LEGISLATION

### PENAL LAW REVISION (ABOLITION OF THE DEATH PENALTY FOR MURDER) ACT, 1954<sup>1</sup>

1. Where a person has been convicted of murder, the court shall impose the penalty of imprisonment for life, and only that penalty.
2. Section 215 of the Criminal Code Ordinance, 1936, shall no longer be applied, except where a person has been convicted of murder under section 2 (f) of the Nazis and Nazi Collaborators (Punishment) Act, 1950.<sup>2</sup>
3. A person who has been sentenced to death before the coming into force of this Act shall be deemed to have been sentenced to imprisonment for life.

<sup>1</sup> Hebrew text in *Sefer Ha-Chukkim* No. 146 of the 21st Adar I, 5714 (24 February 1954), p. 74. English translation received through the courtesy of Mr. Shabtai Rosenne, Legal Adviser, Ministry of Foreign Affairs, Jerusalem, government-appointed correspondent of the *Tearbook on Human Rights*. The Act was adopted by the Knesset on the 13th Adar I, 5714 (16 February 1954). The bill and an explanatory note were published in *Hatza'ot Chok* No. 15 of 5709, p. 159.

<sup>2</sup> *Sefer Ha-Chukkim* No. 57 of 5710, p. 281.

## JUDICIAL DECISION

### EQUAL RIGHTS OF WOMEN—PROHIBITION OF POLYGAMY HELD NO VIOLATION OF RELIGIOUS RIGHTS OF MUSLIMS

MALHAM v. THE SHARIA JUDGE, ACRE AND DISTRICT

*Supreme Court of Israel sitting as the High Court of Justice*<sup>1</sup>

8 July 1954

Olshan, Chief Justice, Silberg and Landau, Judges

*The facts.* The sole question which the court was asked to decide in this case was whether Muslims in Israel are allowed to take more than one wife or whether the Women's Equal Rights Act, 1951,<sup>2</sup> by repealing paragraph (c) of the proviso to section 181 of the Criminal Code Ordinance, 1936, has forbidden polygamy also to Muslims. The doubt had arisen because of section 5 of the Women's Equal Rights Act, by which "this law shall not affect any legal prohibition or permission relating to marriage or divorce".

*Held.* That the prohibition on polygamy applies to Muslim citizens of Israel. In the course of the judgement of the court given by Mr. Justice Silberg, the following passages appear:

<sup>1</sup> Report: *Piskei-Din* (Official Law Reports), Vol. 8 (1954), p. 910. Summary prepared by Mr. Shabtai Rosenne, Legal Adviser, Ministry of Foreign Affairs, Jerusalem.

<sup>2</sup> See *Tearbook on Human Rights for 1951*, p. 185.

"Before discussing the question in detail we will first consider another 'preliminary' question raised by counsel for the petitioner to the effect that the prohibition of polygamy on Muslims infringes their freedom of religion and that therefore the Knesset cannot pass a law containing such a prohibition. We do not accept this argument. Without going into the question whether and to what extent it is possible or permissible for the legislative organ to enact legislation specifically infringing the individual's freedom of religion, it is clear that in this case, at all events, there was no such infringement. Freedom of religion does not mean freedom to do what the religion *permits*, but freedom to perform those religious duties which are incumbent upon the believer. It seems quite clear that to take more than one wife is not a religious duty imposed upon its adherents by the Islamic faith, but is permissible even though it is quite possible that in certain circumstances this permission may enable

some other religious duty to be undertaken. But that is a situation regarding many permitted actions the prohibition of which the legislator for some reason or other regards as necessary, and no one can complain about that.

"We have not overlooked that polygamy is a custom very deeply rooted in the lives of most Muslim peoples and that it is very closely connected with their ideology, mentality and outlook upon life. It is in the nature of things that wherever this custom is prevalent or tolerated it becomes woven into the texture of the social life of that people or of that society, becoming one of the pillars of their culture. But one has to travel a long distance to deduce from that the existence of a real religious duty, an obligation which the individual *must* perform. It should also not be forgotten that not every State having a Muslim population continues to permit polygamy (Turkey, for example). There is even an opinion expressed, for example, in a book by Syed Amir Ali, *Mohammedan Law*, and which was brought to our attention by the learned Attorney-General, that 'the conditions under which it [polygamy for Muslims] was permitted are so difficult of compliance that they amount to a virtual prohibition and that, the circumstances which rendered it permissible in primitive times having either passed away or not existing in modern times, the practice of polygamy is in contravention of the [religious] law' (5th edition, p. 159). And if a modern State such as Israel considered it necessary to abolish an existing discrimination and to prohibit polygamy to all the inhabitants of the State, it is no valid criticism to say that in so doing that State ignored, so to speak, the religious duties of its Muslim citizens."

At this point the judge referred to the position of the Mormons in the State of Utah, quoting from the decision of the U.S. Supreme Court in *Reynolds v. United States*, U.S.S.C. Rep. 25 Law ed. 244, *Davis v. Beason*, 10 Supreme Court Reporter, 299 and *Late Corporation of the Church of Jesus Christ of Latterday Saints and others v. United States*, *ibid.*, p. 792. The judge continued: "That is also the law . . . in the case before us. Here, as we have seen, there is no infringement of the freedom of religion of the citizen, either of the principles of his faith, or of his religious duties. Muslim polygamy differs from that of the Mormons in that it is not part of the faith of the Muslim or one of his religious duties. In the *Tosipof* case,<sup>1</sup> a Jewish polygamist attacked the validity of the mandatory law regarding polygamy on the ground that it infringed the freedom of religion or freedom of conscience of the individual. That argument was dismissed chiefly on the ground that the prohibition of polygamy did not constitute an infringement of any religious duty imposed upon the accused in that case or any other member of his community.

"We now pass to the principal argument of Mr. Hawary—namely, the inconsistency between section

5 and section 8(a) of the Women's Equal Rights Act, 1951. Mr. Hawary repeatedly stressed how great this inconsistency is. But it is precisely this stress which demonstrates the weakness of the argument. For it is a juridical impossibility for any inconsistency to exist between two sections of a single law. Obviously, then, such inconsistency as there is can only be superficial, so that it is necessary to probe deeper into the law and to bring out those factors common to both the sections.

"It is not very difficult to resolve this problem. The purpose of this law, as its name witnesses, is to equalize the woman's status to that of the man and to root out any legal discrimination which might exist between man and woman. Therefore, 'a man and a woman shall have equal status with regard to any legal proceeding' (section 1); 'A married woman shall be fully competent to own and deal with property as if she were unmarried' (section 2); 'Both parents are the natural guardians of their children' (section 3). Here another point began projecting itself on the mind of the legislator: What will happen if, in the name of this equality, all those legal discriminations existing in the matter of marriage and divorce, inasmuch as by the Palestine Order-in-Council, 1922, these matters are subject to religious law, are to be abolished? For example, if a man, be he Jewish or Muslim, takes a second wife while the first marriage is subsisting, the second marriage is valid, but where a married woman who marries another man while her first marriage is subsisting, the second marriage is a nullity. Again, a Jewish husband whose wife becomes insane can obtain a release and permission to re-marry from a court of 100 rabbis, but this remedy is not available to a wife whose husband becomes insane. However, the Women's Equal Rights Act is a law of the Knesset and it binds all the inhabitants of the State, including the most religious. Surely—but for its section 5—it would have abolished all these legal discriminations.

"Since the legislator did not desire so far-reaching a consequence—his object being to respect and not to infringe these legal prohibitions and permissions—it was enacted in section 5 that despite the underlying premiss of the law—namely, the equal rights of the woman, this law shall not affect any legal prohibition or permission relating to marriage or divorce. This is the burthen of section 5. That is why it was included in the law. That being so, there is no inconsistency whatsoever between the two sections, and not the slightest limitation upon the generality of section 8 is to be found in section 5. The only purpose of section 5 is to preserve and protect certain legal discriminations of the nature already mentioned and which exist in the provisions governing personal status of Jewish religious law and of the religious law of other recognized communities. The practical consequences are, in the present case, that if the petitioner had succeeded with the assistance of the respondent in taking the woman as his wife, that second marriage would have been valid. But section 5 does not in itself

<sup>1</sup> *Yearbook on Human Rights for 1951*, pp. 186–189.

abolish the abolition of discrimination contained in section 8(a). In face of an explicit provision it is as impossible as it is inconceivable that in section 5 the legislator erased what he was about to write in section 8(a) of the law.

"There is another side to the coin, as was pointed out by the learned Attorney-General. Without disputing the interpretation given above to section 5, the learned Attorney-General is of opinion that this section has another object—namely, to prevent the cancellation of the civil legal consequences of an act performed contrary to section 8(b) of the law. That sub-section makes it a criminal offence punishable by imprisonment for a term not exceeding five years for a husband to dissolve the marriage against the will of the wife without a judgement of a competent court or tribunal ordering the wife to dissolve the marriage. Is it possible for this criminal act to be a complete

nullity from the point of view of civil law so that the wife will not be divorced and her subsequent marriage not valid? Section 5 answers this by proclaiming that the criminality of dissolving the marriage against the will of the wife leaves unaffected the legal force of the dissolution of the marriage to the extent that the dissolution of the marriage will be valid in accordance with the religious law of personal status applicable to the couple by virtue of the Order-in-Council of 1922.

"In conclusion, by whatever interpretation, that which we have given to section 5 or that suggested by the learned Attorney-General, section 8(a) of the Women's Equal Rights Act, 1951, is valid and subsisting and is competent to prohibit polygamy to all the inhabitants of the State.

"For that reason we refused the petitioner's application for an order nisi."

## ITALY

### THE DEVELOPMENT OF HUMAN RIGHTS<sup>1</sup>

#### I. LEGISLATION

During 1954 a number of legislative provisions were enacted in Italy which apply, in their substance, some of the rights laid down in the Universal Declaration of Human Rights and which relate to: (1) social security (Declaration, articles 22 and 25); (2) increase of opportunities of employment; conditions of employment; and protection against unemployment (Declaration, article 23); (3) education (Declaration, article 26, paragraph 1); (4) redress of wrongs suffered by certain categories of persons through political discrimination under the late Fascist régime (Declaration, article 7); and (5) ethnic minorities.

(1) First and foremost among the year's enactments which relate to social security is Act No. 1136, of 22 November 1954 (*Gazzetta Ufficiale* No. 285, of 13 December 1954), to *extend the benefit of sickness insurance to small-holders*.<sup>2</sup>

In Italy, one has to go back as far as 1917 for the first and only previous Act providing welfare measures in favour of this immense category of self-employed workers; that Act had extended the cover against industrial accidents to include all manual workers in agriculture, whether wage-earning or self-employed. But from 1917 onwards, small-holders were neglected in the development of social welfare measures, which gradually came to embrace every form of protection for all persons employed by others, but failed to take account of the equally legitimate needs of the self-employed agricultural worker, who in point of fact earns less as a rule than the share-cropper. The origins of the new Act go back to a bill first submitted to the Chamber in 1948, the essential purpose of which was to remove the existing unfair discrimination in social security matters between wage-earning occupations and self-employment. On the basis of the 1936 census, it is calculated that 6,426,560 individuals, counting active workers and members of their families, will qualify for the benefit of the various forms of assistance provided under the new Act.

Article 1 of the Act of 22 November 1954 makes sickness insurance compulsory for every land-owner,

tenant farmer, persons holding land under a long-term or perpetual (emphyteusis) and usufructuary who is directly and habitually engaged in the actual cultivation of the land or in animal husbandry; insurance is also compulsory for the members of the cultivator's family if they habitually work on the land holding or are dependants, subject to the proviso that the total labour force represented by the family nucleus must, in the aggregate, be greater than 50 per cent of the manpower normally required for working the holding and for the purposes of animal husbandry. In the calculation of this labour force, each active member of the family nucleus is regarded as representing 280 working days a year. The Act does not apply to persons who work holdings, the presumed aggregate manpower needs of which are computed at less than thirty man-days per annum, though such persons may be eligible for sickness benefit on other grounds.

The benefits provided are (article 3): (a) general medical treatment given at home or in out-patient clinics; (b) hospital care; (c) specialist diagnosis and curative treatment; (d) maternity benefits. The benefit of the Act does not extend to diseases normally dealt with by anti-tuberculosis societies or other public bodies, or to diseases covered by other forms of compulsory insurance.

Insured persons as defined in article 1, who are members of the communal mutual societies also set up under the Act, have the option of extending the sickness insurance for themselves and their families to cover pharmaceutical and supplementary benefits. Article 5 of the Act provides for the establishment in every commune of a communal small-holders' mutual society to deal with claims for general maternity benefits, and in every province, of a provincial small-holders' mutual society, to deal with claims for hospital treatment, specialist diagnosis and curative treatment, and specialist maternity care. Subject to certain conditions and formalities, the communal mutual societies may split up into branch societies or amalgamate to form inter-commune societies. The provincial mutual societies are in turn affiliated to a National Federation of small-holders' mutual sickness insurance societies, which is responsible for supervising the activities and administration of the provincial mutual societies. The communal, branch, and inter-commune mutual societies, the provincial societies and the National Federation are bodies corporate under public law; they are subject to supervision by the Ministry of Labour and Social Welfare; and they enjoy all the benefits, privileges and tax exemptions

<sup>1</sup> Note prepared by Dr. Maria R. Vismara, Director of Studies and Publications of the Italian Association for the United Nations, Chief Editor of *La Comunità Internazionale*, a publication of the Association, and government-appointed correspondent of the *Yearbook on Human Rights*. Translation by the United Nations Secretariat.

<sup>2</sup> *Coltivatore diretti*: persons who operate agricultural holdings directly—i.e., not through tenants. [Editor's note]

granted to the National Provident and Welfare Institute.

Articles 6 to 21 of the Act contain detailed provisions governing the composition, organs (governing bodies, executive boards, audit committees, and committees of management), competence and functions of the provincial mutual societies, the National Federation, and the communal societies.

The financing of the sick benefit scheme laid down in the Act is provided by (article 22): (a) an annual state grant of 1,500 lire in respect of each small-holder or family member eligible for benefit under the Act; (b) a contribution by the undertakings carried on by small-holders liable to compulsory insurance, the amount to be determined from year to year in conformity with the royal legislative decree No. 2138, of 28 November 1938, and its subsequent amendments; (c) an annual contribution per head in respect of each small-holder or family member liable for compulsory insurance, to the extent necessary to provide a total sum equal to the amount of the contribution laid down under (b) above; (d) where necessary a supplementary contribution to be fixed by the communal mutual society to cover any increase in the cost of the ordinary health benefits and any extension of benefits to optional services; this does not apply, however, to cases in which the increase in costs is due to epidemics or other exceptional circumstances.

Appeals may be lodged (article 25) against the assessment of the contributions under article 22 (b), (c), and (d), in the manner prescribed in specified statutory provisions (appeals are lodged with the prefect.)

If a small-holder is at the same time a share-cropper, settler, co-partner, wage-earner or journeyman and entered in the census registers of agricultural workers and is in consequence, in any case eligible for sickness benefits, he is not required to be compulsorily insured under article 1 of the Act (article 2).

Article 29 regulates, on a purely democratic basis, the election of all the officers of the communal and provincial mutual societies and the National Federation. Election is by majority vote in secret ballot. The persons working small holdings in their own name (article 18), who are entered in the registers as liable for payment of the contribution under article 22 (b), meet every three years in communal assembly to elect, in accordance with article 29, the governing body of the mutual society, consisting of fifteen members. The chairmen of the communal mutual societies meet in assembly to elect the governing body of the provincial mutual society, consisting of eleven members (article 6). In their turn, the chairmen of the provincial mutual societies, meeting in national assembly, elect the twenty members of the Central Council of the National Federation of small-holders' mutual societies (article 11).

The Ministry of Labour and Social Welfare is re-

sponsible for securing compliance with the provisions of the Act (article 36).

Some other enactments relating to social welfare are mentioned below:

Act No. 657, of 9 August 1954 (*G.U.* No. 189, of 19 August 1954) to make provision for tuberculous workers and their families in receipt of benefits under the insurance scheme, and to enact regulations governing post-sanatorial allowances for settlers and share-croppers. Article 1 extends insurance benefits for curative treatment to the following members of the family of the insured person: (a) wife, (b) invalid husband, (c) legitimate or natural children, adopted children, children normally living with the family, children born of a previous marriage of the insured person's spouse, natural children of the spouse, brothers and sisters living as dependants. The term "children" includes foundlings properly committed to the family's care. In the case of persons in category (c) eligibility to benefits ceases at the age of twenty, unless they are students at institutions of higher education (universities and the like) in which event eligibility ceases at the age of twenty-six years. These age-limits do not apply, however, to persons who are permanently incapacitated for work. Under the same Act, the right to the post-sanatorium benefits provided by Act No. 86, of 28 February 1953,<sup>1</sup> is extended to settlers, share-croppers and their families, even if they return to the farm or holding, so long as they do not resume normal full-time work.

Act No. 1222, of 4 December 1954 (*G.U.* No. 7, of 11 January 1955) authorizes increases in the insurance benefits for industrial accidents and occupational diseases for officers of the merchant navy and fishing fleet.

Act No. 409, of 11 June 1954 (*G.U.* No. 156, of 12 July 1954), provides for higher rates of retirement pay for members of the Medical and Related Professions Pensions and Provident Fund; it amends the regulations of the Fund itself and enacts other provisions to liberalize the conditions applicable to the pensioners.

A noteworthy welfare measure, Act No. 1032, of 8 November 1954 (*G.U.* No. 261, of 13 November 1954), sets up a National Winter Relief Fund for the purpose of providing more effective winter relief for necessitous persons. Pursuant to the Act, the requisite funds will be obtained by a series of surcharges on tickets of admission to theatres, public entertainment of all kinds, casinos and sporting events, and on weekend excursion tickets issued by railways, buses and lake steamers.

Another group of enactments makes provision for assistance to certain categories of physically handicapped persons:

Act No. 632, of 9 August 1954 (*G.U.* No. 186, of 16 August 1954) introduces new provisions relating

<sup>1</sup> See *Tearbook on Human Rights for 1953*, p. 162.



to the welfare of blind persons and sets up (article 1) the National Institution for the Blind, a body corporate under public law with an autonomous administration. This institution, in addition to being responsible for distributing the allowances payable under the Act, also co-ordinates and promotes the activities of public and private institutions and bodies in the matter of the training, rehabilitation and employment of blind persons. The Institution is subject to supervision by the Ministry of the Interior, the Ministry of Labour and Social Welfare, and the Treasury. To enable it to carry out its duties, the Institution receives from the State an annual grant of 4,200 million lire (article 3). In addition, under the Act (article 4) a life pension is payable to Italian nationals who suffer from congenital blindness or have lost their eyesight, if they are incapacitated for gainful employment and have no means of livelihood; this provision is without prejudice, however, to the obligations laid down in articles 43 *et seq.* of the Civil Code.<sup>1</sup> The pension is paid out by the Institution, in sums varying from 10,000 to 14,000 lire per month, from the age of eighteen onwards to all persons who are either totally blind or have suffered an impairment of their vision of not less than 90 per cent.

Act No. 218, of 10 April 1954 (*G.U.* No. 118, of 24 May 1954) extends the relief and therapeutic treatment provided under Act No. 932 of 10 June 1940 for curable cases of necessitous persons suffering from the after-effects of poliomyelitis, to necessitous curable cases of spastic infantile paralysis and dislocation of the hip, the new Act applying, in the latter case, to infants and young children only.

Act No. 148, of 16 April 1954 (*G.U.* No. 103, of 6 May 1954) increases the rates of the pensions now being paid to seriously disabled ex-servicemen.

Act No. 204, of 7 May 1954 (*G.U.* No. 116, of 21 May 1954) makes provision for the payment of special grants-in-aid (approximately 2,000 million lire) to the National Institutions for Disabled Ex-servicemen and War Orphans, in respect of the financial year 1950-51 and earlier years.

It is also relevant to mention, in this context, Act No. 633, of 9 August 1954 (*G.U.* No. 186, of 16 August 1954), which makes provision for an annual appropriation of 300 million lire to be applied to the purpose of aid for discharged prisoners. This sum is to be apportioned as to one-half to the Discharged Prisoners Aid Society and as to the other half in the form of grants to bodies whose object is likewise to assist persons on release from detention.

Another enactment which also comes within the scope of social security is Act No. 1041, of 22 October

1954 (*G.U.* No. 260, of 12 November 1954)<sup>2</sup> to regulate the manufacture of, trade in and use of narcotic drugs. By virtue of article 1, the manufacture of, trade in and use of substances and preparations having narcotic effects are placed under the control and supervision of the High Commissioner for Hygiene and Public Health, who exercises his powers through the appropriate central organs, and in the provinces through the prefects, assisted by the branch offices, the officers and agents of the police forces and, so far as supervision and control on ships and aircraft are concerned, by the port captains and airport authorities. The Act provides for a Central Narcotics Bureau to be set up within the Office of the High Commissioner and to be responsible for measures necessitated by the application of the relevant legislative provisions and international agreements, for the exercise of supervision and control over the substances and preparations in question and for the organization of the campaign against addiction.

Lastly, two enactments deal with housing:

Act No. 640, of 9 August 1954 (*G.U.* No. 186, of 16 August 1954) introduces provisions for the elimination of insanitary housing. Article 1 authorizes the Ministry of Public Works to order the construction, at the expense of the State, of dwellings to house families living in caves, huts, cellars, public buildings, insanitary or otherwise unfit premises. The dwellings to be built under the Act (article 3) are of the low-cost "people's houses" type and will normally consist of two or three, and up to four habitable rooms, plus the usual offices. The building projects are declared to be in the public interest and urgent and to have absolute priority (article 5). Once the dwellings have been built they will be transferred (article 6) to the Low-cost Housing Institutes for the purpose of management—and to begin with *UNRRA-Casas* dwellings—and delivered to the tenants either under lease or under a contract contemplating the subsequent sale of the dwelling in question (article 7); the tenants will pay an appropriate annual sum. In each commune, a special committee is to be responsible for allocating the dwellings, in conformity with rules laid down in the Act (articles 2 and 8). As soon as the tenants have taken possession of the new dwellings, an order will be made (article 10) for the destruction of huts or the closing of the caves which they had previously occupied. The Ministry of Public Works is empowered, when setting up new housing projects for families previously housed in insanitary quarters, to construct (article 12), as part of such projects, buildings of a social nature such as schools, homes for aged persons, churches, etc. Provision is made for special fiscal

<sup>1</sup> Articles 43 *et seq.* of the Civil Code deal with the liability for maintenance of certain categories of relatives.

<sup>2</sup> This Act contains many other important provisions. An English translation of the Act appears in *Laws and Regulations* promulgated to give effect to the provisions of the Convention of 13 July 1931 for limiting the manufacture and regulating the distribution of narcotic drugs, as amended by the Protocol of 11 December 1946 (United Nations document E/NL.1954/144 of 17 March 1955).



relief in respect of the deeds and documents which are necessary for the purpose of giving effect to the Act; in addition, the Act establishes the budget necessary for its operation.

A ministerial decree of 5 June 1954 (*G.U.* No. 164, of 21 July 1954) supplements Act No. 137, of 4 March 1952<sup>1</sup> so far as this Act relates to housing for refugees; the decree increases the number of building sites from thirty-seven to forty-four and makes provision for the consequential supplementary appropriations.

(2) Two enactments provide for an expansion in the *public works programmes*:

Act No. 1087, of 10 November 1954 (*G.U.* No. 275, of 30 November 1954) provides for an appropriation of 25,000 million lire for a special programme of irrigation works in land reclamation districts and of 10,000 million lire for land conversion works (grants-in-aid, financing of purchase of land and land conversion by the National Ex-Servicemen's Association (Opera Nazionale Combattenti) and land settlement agencies).

Act No. 543, of 15 July 1954 (*G.U.* No. 174, of 2 August 1954) supplements Act No. 647, of 10 August 1950,<sup>2</sup> which provided for a large-scale programme of works of public interest in Northern and Central Italy and prolongs the financial period covered by the 1950 Act for a further two years (i.e., until 1961/62).

The following two enactments deal with *conditions of employment*:

Act No. 109, of 31 March 1954 (*G.U.* No. 98, of 29 April 1954) makes more liberal provision for the remuneration of persons employed as superintendents, janitors and cleaners in buildings, viz. a 30-per-cent increase in the minimum wages and cash benefits laid down in the existing provincial agreements complementary to the national collective contract; a 30-per-cent increase in the present local cost of living allowance; a 50-per-cent increase in the value, under the agreements, of the items in kind (lodging, light, heat, etc.) or of the allowances paid in lieu thereof; equality of treatment of female and male employees with respect to these items which, under the agreements, are payable in kind or in cash allowances in lieu thereof.

Act No. 233, of 15 May 1954 (*G.U.* No. 124, of 1 June 1954) raises the minimum age for the admission of children to employment on board ships from fourteen years (the minimum age laid down in art. 119 of the Maritime Code) to fifteen.

Among the enactments which make provision for *unemployed persons*, mention should be made of the ministerial decree of 31 August 1954 (*G.U.* No. 200, of 1 September 1954) under which involuntarily unemployed workers in certain communes and in specified

occupations become eligible for the special unemployment benefits established under Act No. 264, of 29 April 1949.<sup>3</sup>

(3) In the matter of *education*, Act No. 645, of 9 August 1954 (*G.U.* No. 187, of 17 August 1954), makes provision for: special appropriation for school construction; the establishment of elementary schools; a series of concessions for pupils, such as exemption from tuition fees for deserving secondary school pupils from low-income families; exemptions from tuition fees for specified classes of persons (war orphans of servicemen or of civilian fathers, children of war-disabled persons, blind persons); exemptions from fees for children of large families, for foreign students and for children of Italians abroad; annual scholarships and school grants to needy and deserving students and pupils.

(4) Act No. 232, of 15 May 1954 (*G.U.* No. 124, of 1 June 1954), supplements the earlier Italian enactments having as their object to redress the wrongs occasioned by the various forms of *discrimination practised by the late fascist regime*.<sup>3</sup> This Act contains provisions concerning medical personnel who were victims of fascist persecution. Under article 1, a physician, surgeon or veterinary surgeon who had been removed from service or dismissed for political reasons is likewise eligible for reinstatement under royal legislative decree No. 9, of 6 January 1944, and for restitution of acquired rights under legislative decree of the Lieutenant of the Realm No. 301, of 19 October 1944, in any case in which he can prove that he qualified in a competitive examination but was disqualified and refused appointment to a post solely on the grounds of political misconduct or conduct contrary to the political directives of the fascist regime. Under article 2, physicians, surgeons and veterinary surgeons, reinstated either by virtue of article 1 of royal legislative decree No. 9, of 6 January 1944, or because they had been dismissed from the service by reason of conduct contrary to the political directives of the fascist régime, are reconfirmed in the post and rank they now hold, with effect from the date of appointment of the successful candidates in the competitive examinations for the post in the category to which they belong and for a period equal to the time that elapsed between their dismissal or disqualification from the competitive examination and their reinstatement, always provided that they have not since reached the age limit of sixty-five years. If the established posts in question have already been declared open to competitive examination or are already held by others, such medical personnel shall be carried as surplus to establishment. Article 3 specifies that victims of fascist political persecution shall be eligible for appointment by competitive examination to any grade as physicians, surgeons or veterinary surgeons in the service of local authorities regardless of the age-limit for entry and for as many

<sup>1</sup> See *Yearbook on Human Rights for 1952*, p. 157.

<sup>2</sup> *Ibid.*, for 1951, p. 193.

<sup>3</sup> *Ibid.*, pp. 193-195.

years from the date of promulgation of the Act as have elapsed between the date of announcement of the examination in which the candidate was demonstrably unable to take part and the date of publication of legislative decree of the Lieutenant of the Realm No. 301, of 19 October 1954, always provided that they have not since reached the age limit of sixty-five years. Other clauses of the same Act provide for optional membership of the Health Workers' Pension Fund in the case of medical personnel who were prevented by political discrimination from joining at the proper time, and there are similar provisions concerning the grant of pensions to the widows of members of the medical profession who suffered fascist persecution.

(5) *Minorities* are the subject of Act No. 642, of 9 August 1954 (*G.U.* No. 187, of 17 August 1954), to liberalize certain provisions applicable to the inhabitants of the Alto Adige who recover Italian citizenship under the Italian legislation relating to nationality. Under the Act, if an inhabitant of the Alto Adige who has the right to opt and who was formerly debarred, by legislative decree No. 23, of 2 February 1948 (*G.U.* No. 29, of 5 February 1948), from recovering Italian citizenship has since acquired, or hereafter acquires, Italian citizenship under article 4, paragraph 2, of Act No. 555 of 13 June 1912 as amended by royal legislative decree No. 1997 of 1 December 1934 (which states that Italian citizenship may be granted... "to any alien who has been resident in the kingdom for not less than five years"), then that person may claim the benefit of the provisions of Act No. 4, of 3 January 1951 (*G.U.* No. 11, of 15 January 1951) (to readmit to the practice of their profession notaries who recover Italian citizenship under legislative decree No. 23, of 2 February 1948) and of Act No. 1515, of 18 December 1951 (*G.U.* No. 4, of 5 January 1952), (to enact rules governing the recognition of degrees or diplomas obtained in Austria or Germany by persons who recover Italian citizenship under legislative decree No. 23, of 2 February 1948, and to authorize such persons to exercise their professions), such persons are also eligible for the benefit of the provisions of Act No. 1008, of 20 July 1952.<sup>1</sup> Article 2 of the 1954 Act sets forth the conditions subject to which the inhabitants of the Alto Adige concerned may become, or again become, eligible for ordinary, war, or social security pensions.

Finally, as an indication of the active interest of the competent Italian authorities in labour problems, attention should be drawn to the three ministerial decrees of 20 July 1954 (*G.U.* No. 177, of 5 August 1954), 20 September 1954 (*G.U.* No. 222, of 27 September 1954) and 25 September 1954 (*G.U.* No. 251, of 7 October 1954), each setting up a commission under the Ministry of Labour and Social Security. The terms of reference of the three commissions are as follows; the first is directed to collect the necessary data preparatory to the drafting of legislation relating

to anti-tuberculosis measures which will ensure the most effective preventive treatment and after-care; the second, to make a study of labour safety conditions in Italian undertakings and the third, to prepare draft legislation to unify the system of contributions to the pension and social welfare funds.

## II. TREATIES AND CONVENTIONS WHICH BECAME OPERATIVE IN 1954<sup>2</sup>

Instrument for the amendment of the ILO Constitution, adopted by the General Conference of the International Labour Organisation at Geneva on 25 June 1953.

Ratified and put into effect with respect to Italy by Act No. 326, of 1 June 1954 (*G.U.* No. 143, of 2 June 1954).

Agreements between the Italian Republic and the Federal Republic of Germany:

(a) Convention respecting unemployment insurance, with Final Protocol, signed at Rome on 5 May 1953; (b) convention respecting social insurance, with Final Protocol, signed at Rome on 5 May 1953; (c) agreement supplementary to the Convention respecting social insurance of 5 May 1953, relating to the grant of allowances and pensions for the period prior to the entry into force of the convention, with Final Protocol, signed at Rome on 12 May 1953.

Ratified and put into effect in Italy by Act No. 823, of 17 July 1954 (*G.U.* No. 208, of 10 September 1954, supplement).

Agreement between the Italian Government and the Office of the United Nations High Commissioner for Refugees, signed at Rome on 2 April 1952.

Approved and put into effect in Italy by Act No. 1271, of 15 December 1954 (*G.U.* No. 19, of 25 January 1955).

Convention between the Italian Republic and Austria respecting social insurance, with additional protocol, signed at Vienna on 30 December 1950, and second additional protocol, signed at Vienna on 29 May 1952.

Ratified and put into effect in Italy by Act No. 1104, of 29 October 1954 (*G.U.* No. 278, of 13 December 1954).

Convention relating to the status of refugees, signed at Geneva on 28 July 1951.

Ratified and put into effect with respect to Italy by Act No. 722, of 24 July 1954 (*G.U.* No. 196, of 27 August 1954).

General convention between the Italian Republic and the Grand Duchy of Luxembourg respecting social insurance, with special protocol, signed at Luxembourg on 29 May 1951.

<sup>1</sup> See *Yearbook on Human Rights for 1952*, p. 158.

<sup>2</sup> See also pp. 398-400.

Ratified and put into effect in Italy by Act No. 711, of 31 July 1954 (*G.U.* No. 194, of 25 August 1954).

Convention between France, Italy and the Saar to extend and co-ordinate the application of French social security legislation and Italian and Saar social insurance and family benefit legislation to nationals of the three countries, signed in Paris on 27 November 1952.

Ratified and put into effect in Italy by Act No. 678, of 17 July 1954 (*G.U.* No. 191, of 21 August 1954).

Clauses supplementary to the General Convention of 31 March 1948 between Italy and France respecting social insurance, signed in Paris on 13 June 1952.

Ratified and put into effect in Italy by Act No. 339, of 19 May 1954 (*G.U.* No. 145, of 28 June 1954).

### III. JUDICIAL DECISIONS

From among the recent decisions in which the Italian courts have upheld some of the most sacred of the rights of man—in some cases declaring the relevant articles of the Italian Constitution to be mandatory and not mere statements of principle, and in other cases referring explicitly to the Universal Declaration of Human Rights—this note will cite only a select few which manifestly conform to the spirit of articles 15, 13, 27 and 18 of the Universal Declaration, relating respectively to the right to a nationality, the right to freedom of movement, protection of the rights of authors and the right to freedom of religion.

On 20 March 1954, the court of Taranto (petitioner: Tovt) gave a ruling, in the form of an order (*decreto*), relating to the admissibility of proceedings for the *judicial establishment of statelessness* (*Giurisprudenza Italiana*, 1954, first part, II, 573). This order constitutes a first statement on the subject, for there do not seem to be any judicial precedents relating to the specific points of law which were considered by the court.

According to the principle laid down in this ruling, a stateless person resident in Italian territory can institute proceedings to establish his status in the court of his place of residence, and the proceedings may be treated by the court either as contentious or as non-contentious proceedings, as the person concerned elects. The onus of the proof of statelessness lies on the person instituting the proceedings—i.e., on the stateless person—but since he is expected to prove a negative (viz. that he is not a national of any particular State), it will be for the court to weigh the evidence as a whole and without undue strictness. Presumptions and documents having an indirect bearing on the case may be freely used for the purpose. The principles applied by Italian legislation concerning nationality are those contained in article 15 of the Universal Declaration of Human Rights, proclaimed by the General Assembly of the United Nations

on 10 December 1948, and in article 10, third paragraph, of the Italian Constitution, relating to the right of asylum, etc.<sup>1</sup> These provisions give documentary expression to the intention of our State, on the one hand to provide maximum protection and assistance for foreign refugees, and on the other hand to absorb into the community of the Italian State persons now separated from their States of origin who have long belonged to Italy by reason of continuous and uninterrupted residence.

"The petitioner Tovt," says the court in its ruling, "has an obvious interest in obtaining the declaration [of statelessness] for which he has applied. The status of statelessness may be regarded as characterized by a relationship of foreignness with respect to the national community; or, on the other hand, the enjoyment of the rights whose possession by the stateless person is recognized by the host State may be regarded as simply the attribute of the human person, irrespective of the individual's membership of a politically organized society. Whichever view one takes, however, there is no doubt that, in municipal law, which is obviously the only law capable of governing the status of stateless persons, that status constitutes a pre-requisite for the application of certain rules of law, or, more precisely, perhaps, a pre-requisite for the conferment on the person concerned of a legal capacity, even if limited.

"From this point of view, the definite and manifold importance of statelessness in our legal system may be demonstrated by a brief reference to some provisions now in force which, explicitly or implicitly, attach to that status certain legal effects..."

The court then cites the various legislative provisions governing the legal status of stateless persons in Italy, and also the London Agreement of 15 October 1946 for the protection of refugees, to which Italy acceded on 1 October 1947 and which was carried into effect by legislative decree No. 604, of 18 March 1948. The court continues:

"If, then, for the reasons explained above, Italian law treats statelessness as a condition to be fulfilled before the person in question can be held to possess a measure of legal capacity, that person has a patent interest in asking for, and has a right to institute proceedings for, a declaration holding him to possess this legally important personal status. Nor is this status merely a negative attribute of the person. Indeed, in the light of the provisions cited above, this court cannot avoid the conclusion that what Alfredo Baccello, Rapporteur, told the Chamber of Deputies concerning the bill which later became the Citizenship Act, 1912—he described the stateless person as a juridical and political absurdity, as unthinkable as (in the physical world) a cell that did not form part of an organism—is no longer true.

<sup>1</sup> See *Yearbook on Human Rights for 1947*, p. 164.

"There is therefore no reason why a stateless person should be denied an opportunity for applying, if necessary by the institution of proceedings, for a declaration establishing his status; nor should he have to wait until the occasion arises, in some judicial or administrative proceeding, in which such a declaration is needed as a preliminary or incident to the main action. And furthermore, an application for such a declaration cannot be addressed to any authority other than the ordinary courts..."

The court goes on to discuss the procedural features of Tovt's action, and concludes that the ruling applied for should take the form, not of a judgement, but of an "order with statement of reasons". Dealing with the merits of the petitioner's case, the court says:

"...the issue is whether it has been proved that the petitioner possesses the status of stateless person which he is asking the court to declare him to possess. At this point, however, we must pause to consider certain implications. If the term 'statelessness' is to describe the condition of a person who does not possess any citizenship—that is, a person whom no State regards as its national under its law—then it is not easy to see how formal and strict proof of such a condition can be produced. Hypothetically, what one would have to do in fact would be to look through all the laws of all the States for the purpose of satisfying oneself that, in the eyes of the several legislations, the person in question is not a national of any one State. Patently, however, to attempt to prove a negative in this way would mean to rule out *ab initio* all hope of ever producing the proof of statelessness, and the hopelessness of the attempt becomes yet more apparent if it is remembered that, under the general rules governing the onus of proof, the burden would be on the petitioner to prove the existence of all the foreign legislative provisions relevant to the inquiry, the Italian translation of these provisions having to be produced to the Italian court..."

"The implications described above are so far-reaching that we must consider whether, as a definition of 'stateless person', it would not be more accurate to describe him as 'a person whose citizenship is in doubt', rather than as 'a person without a country or citizenship'. In any case, it is quite clear that if we were to state the problem of proof in this matter in absolutely strict terms, we would in the end part company with reality—a reality itself the consequence of the historic circumstances which characterize these troubled times and to which we cannot be blind.

"For surely we cannot fail to realize that, in the course of the distressing events which occurred, specially in Europe, in consequence of the recent war and its political upheavals, large number of persons had no choice but to sever all connexion with their countries of origin and with the latter's representatives abroad, with the result that these persons did not even know how their nationality status was regarded

by the legislation of those countries. Hence such persons are unable to produce strict documentary evidence, positive or negative, or their citizenship status.

"Those who have advocated a revision of the Italian legislation respecting nationality have been sufficiently realistic to propose, among other amendments, one which would modify article 1 of regulation No. 949, of 2 August 1912 (the provision requiring aliens to produce authentic documents issued in the State of origin), and which, if approved, would make it permissible to produce, in any case in which it was proved to be impossible to produce authentic documents, documents of equivalent authority or even affidavits. Nor have the courts, in analogous cases, failed to rely on a realistic and equitable appraisal of particular circumstances. For the purposes of this case it will suffice to cite the decision of the Court of Appeal of Milan, dated 6 February 1951, in the case of *Giumelli v. Wischkin*, in which it was held that the decisive element which should influence a court in declaring (or not declaring) a person to possess the status of statelessness should be the true state of affairs, as determined by all available means, including, of course, circumstantial and presumptive evidence. The [Milan] court took this more liberal view because it regarded it as more consistent with the realities by reference to which an alien may be declared to possess the status of statelessness, in cases in which his personal circumstances perhaps make it impossible for him to produce strict formal proof of his status (*Giurisprudenza Italiana*, 1951, I, 2, 562). This decision, in so far as it has a bearing on the case before us, has since been affirmed by the Supreme Court (Cassation (Civil), Section, II, 31 March 1953, No. 861, *Wischkin v. Giumelli*, *Giurisprudenza Italiana* 1953, I, i, 960).

"It is by these criteria, accepted by such high authority, that this court intends to be guided in weighing the evidence produced in support of the petitioner's assertion of statelessness; and we should add that the 'negative' inquiry concerning the States of which Tovt could potentially be a national will, for the reasons stated, relate solely to those States with which some nexus is discernible by reason either of the person or of the place of origin of the petitioner."

The court then briefly summarizes the historical and political vicissitudes undergone by the territory of which Tovt is a native (the former Sub-Carpathian Ruthenia) and describes how they have affected Tovt's citizenship status. The court proceeds:

"The court realizes, of course, that the arguments so far advanced in support of Tovt's application for a declaration of statelessness are based on evidence which is fragmentary and largely presumptive. In the opinion of the court, however, in the light of what has been said above—that in this case one must rely on circumstantial and presumptive evidence—it is possible to fill the gaps which inevitably exist;

and in this view the court is further confirmed by certain general principles evolved by learned authors, especially in recent years, who have written on the subject of citizenship. Indeed, not least because democratic principles once again govern the life of nations, the tendency today is to reject any form of automatic rule in the attribution of citizenship to individuals, even in cases of transfers of territory, and to regard citizenship as an essentially voluntary relationship, the implication being that one has to accept the principle of the freedom of will of the individual and to concede his claims to an opportunity of shaping his life according to his own free choice. Article 15 of the Universal Declaration of Human Rights which was adopted in Paris on 10 December 1948 by the General Assembly of the United Nations, is an expression of this tendency ('Everyone has the right to a nationality. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.') Though not having the force of a binding rule of law, the provisions of the Declaration nevertheless constitute guiding principles of the highest moral value. And in harmony with this spirit a number of judgements have been given in the courts recognizing that the individual will prevails over the automatic effect of citizenship laws and territorial annexations and refusing to ascribe a particular citizenship to a person who has renounced it or who, by opposing the ruling elements of a particular national community, has definitely broken with that community (Court of Milan, non-contentious proceedings, order No. 6794 of 1947, in *Arch. ric. giur.*, 1948, column 319; Ancona Court of Appeal, 13 June 1950, case of Clementoni (petitioner), in *Mon. trib.* 1950, p. 246). The fact is that, particularly in the present stage of development of international life, ever-increasing importance is being attached to the concept of effective or social nationality, which expresses the solid bond between the individual and a particular community, what is called the 'social nexus' in the sense of the individual's effective participation in the society of a state.

"In the light of these principles, particular importance attaches, in the case under consideration, to the conduct of Mr. Tovt. This petitioner, by establishing and maintaining uninterruptedly for more than fifteen years his residence in Italy and by making Italy the centre of his professional, family and emotional life, has unequivocally demonstrated his desire to abandon his country of origin, without any *animus revertendi*, and to separate himself irrevocably from the politico-social community living and functioning in that country.

"Accordingly, in our view of the foregoing considerations, this court will admit Tovt's application and will make an order which should assure him of that measure of legal protection, restricted though it be, which the status of a stateless person carries with it. Above all, such an order would seem to be consonant with the position which the Italian State has

adopted in formal instruments towards the problem of political and other refugees which characterizes this post-war period. In this connexion it will suffice if we cite article 10, third paragraph, of the Constitution of the Republic, concerning the right of asylum, and Italy's accession to the Washington Convention of 15 December 1946 establishing the International Refugee Organization (IRO), ratified and carried into effect in Italy by virtue of Act No. 313 of 26 March 1949..."<sup>1</sup>

Of particular interest, in relation to article 13 of the Declaration of Human Rights, in so far as it concerns *freedom of movement*, is the decision of the Criminal Court of Cassation, joint session, dated 4 July 1953 (*Giurisprudenza italiana*, 1954, II, 2). In this decision, the court while on the one hand stressing in unequivocal terms the mandatory nature of article 35 of the Italian Constitution ("The Republic... recognizes freedom of emigration"), intends on the other hand to reconcile the citizen's constitutional freedom to leave the territory of the republic with his protection against the illicit exploitation by others of his need for employment and of his readiness to leave the country in quest of an occupation.

The events which gave rise to the decision in question are as follows: The Marchese Michele was summoned before the magistrate at Grammichele charged with the offence referred to in article 5 of Act No. 1278 of 24 July 1930—viz. that he had, by describing in posters and otherwise, the attractive and lucrative prospects of emigration, encouraged Italian citizens to emigrate. After being declared guilty and convicted, the Marchese appealed, contending that the provisions of article 5 of the Act must be held to have been superseded by the provisions of the Constitution now in force. This contention was accepted by the court of Caltagirone, sitting as a court of appeal. Against this decision (i.e., the Marchese's acquittal on the grounds that what he had done did not constitute an offence) the State Counsel-General attached to the Court of Appeal of Catania applied to the Court of Cassation (Rome) for a review of the proceedings. In his application the State Counsel argued that article 5 of the Act of 24 July 1930 and article 35 of the Constitution of the Republic had been violated, because (he said) it had been wrongly held that the constitutional provision—a statement of principle rather than a mandatory rule of law—superseded the provisions of the Emigration Act.

In the passages of its decision which deal with the question of *law*, the Court of Cassation says:

"The question before the Court in this case is whether article 35 of the Constitution, which re-

<sup>1</sup> In the reporter's comment on the Court's Order, published in *Giurisprudenza italiana*, loc. cit., the reasons relied on by the Taranto court in its ruling are regarded as sound in law, even though, as the judges themselves frankly stated, the decision in favour of the person concerned was based mainly on considerations of equity and humanity.



cognizes freedom of emigration subject to the requirements specified by the law in the general interest, has superseded and repealed article 5 of Act No. 1278 of 24 July 1930, which makes it an offence for a person to encourage others to emigrate, whether he does so with a view to profit or not, by any means of publicity whatsoever.

"In this court's opinion, it is beyond doubt that this question should be answered in the negative. The first point to be noted is that article 35 of the Constitution, which is a mandatory provision and not a mere statement of principle, does in fact proclaim the citizen's right to emigrate.

"That this is the case is clearly and unambiguously proved by the spirit of the constitutional provision, as manifested, not only in the discussions which took place in the Constituent Assembly, but also in the democratic principles underlying the entire Constitution, which, it should be emphasized, was drafted with the object of promoting the full development of the personality.

"Furthermore, the wording of the provision in question is so specific and categorical as to exclude all hesitation concerning the applicability of the principle. Consequently, the provision itself must be admitted to be intrinsically fit for immediate application, and hence to be of a typically mandatory character.

"Having settled this point, we must now consider, for the purpose of answering the question before the Court, how this constitutional provision affects the earlier provisions of article 5 of Act No. 1278 of 24 July 1930 referred to above. In ruling on this particular problem—the conflict between two provisions of which one is general in its scope (article 35 of the Constitution) and the other specific (article 5 of the 1930 Act)—this court considers, in the first place, that certain common principles which govern the validity of provisions in time are applicable to this case. According to these principles, to the extent to which a later enactment modifies an earlier one or, with the patent intention of introducing entirely fresh legislation relating to the particular subject, makes regulations governing the entire subject previously governed by the earlier enactment, there and to that extent a later enactment repeals an earlier one. Conversely, if the new provision is compatible with the earlier one or does not make regulations concerning the entire subject to which the earlier enactment applies, then the two can co-exist, being co-ordinated and reconcilable with each other. In the case with which it is now dealing the Court considers that the circumstances are not such as to render the two provisions in question mutually irreconcilable. In the first place we would point out that article 35 of the Constitution makes no explicit or implicit reference to the punishment of the offence of exploiting the ignorance of emigrants. That article merely recognizes the subjective right of emigration and not

the right to undertake publicity in order to make people emigrate. Consequently, it cannot be argued that through the substitution of new legislation the earlier enactment has been *ipso facto* repealed. It is equally inadmissible to entertain the notion that the Constitution-making legislature must be presumed to have intended to repeal the earlier enactment by implication. Article 35 stipulates, in fact, the proviso subject to the requirements specified by the law in the general interest. From this proviso it may be directly inferred that the authors of the Constitution actually meant to maintain the validity of suitable supplementary provisions which, without prejudice to the intrinsic quality and the scope of the democratic principles on which the right of emigration rests, are still fittingly applicable to the matter of emigration, as a means of ensuring that emigration does not become a source of improper enrichment or a cloak for fraud.

"The origin and object of the provision in the Constitution are really quite clear. Although, as stated above, it solemnly guarantees the right of emigration (a subjective right which existed even before it was expressly enunciated), the Constitution at the same time nevertheless imposes conditions on the exercise of this right, in the general interest, by the inclusion of certain limiting provisions. Inasmuch as the aims and objects of the constitutional provision are thus congruent with the previously existing provisions of the Act of 24 July 1930, it may be concluded that, since there is no incompatibility between the general provision of the Constitution and the specific provisions of article 5 of the said Act (which makes it an offence to encourage emigration), therefore the provisions of that article 5 have remained fully operative, unaffected by the entry into force of the Constitution, and have to be enforced unconditionally by the courts.

"Accordingly, the decision which is the subject of this judicial review, being at variance with these principles, is hereby set aside."<sup>1</sup>

Two judicial decisions dealt with the *protection of authors' rights* (article 27 of the Universal Declaration of Human Rights).

The first was a decision of the Court of Appeal of Florence dated 12 August 1953 (*Giurisprudenza italiana*, 1954, first part, II, 450). It states the principle that the author of a translation, by the mere fact of such authorship, possesses a right protected by

<sup>1</sup> The reporter's comment on this decision contains some criticisms of the ruling of the Court of Cassation. Only the second and third parts of article 5, which refer to the presence of profit motives and of false pretences or misrepresentation, should have been declared to be still in force, says the comment. Since the right of any citizen to give honest and disinterested advice on emigration cannot be denied, the first part of article 5, which merely mentions "encouragement", must be regarded as having been superseded by the new principles of the Republican Constitution.

article 4 of Act No. 633 of 32 April 1941, even if he did not have the permission of the author of the original work to publish the translation. A person who makes a translation intended for publication and uses material prepared by others is liable for any damages arising out of such publication.

The action involved a translation by Eugenio Montale of O'Neill's play, *Strange Interlude*. With O'Neill's permission, Montale had made and published a translation, using a version previously prepared by Mrs. Chiappelli, who could not, however, prove that she had obtained either the author's permission or the authority in lieu thereof pursuant to article 2 of Act No. 1473 of 24 November 1941.

Consequently, the first question was whether Mrs. Chiappelli's translation was protected by the legislation relating to authors' rights. In deciding that it was, the Appeal Court of Florence said: "The question whether a translation can *per se* qualify for protection and so give rise to an author's right distinct from that vested in the author of the original has been amply debated in the past. The view that it can has prevailed, based on the consideration that a translation also constitutes a creative work and bears the imprint of its author's personality. The literary merit of translations (some are bad and some are very good) varies essentially in accordance with a number of factors, all related to the translator's talent and skill, his knowledge of the language of the original work, his own literary style and his artistic sense." The decision traces the history of the protection of translations *qua* translations through the Berne Convention of 1886 and the Berlin Convention of 1906, and the report of the Italian Ministerial Commission of 1909, and continues: "The principle [of protection] has been recognized by the legislator and forms the basis of the provision contained in article 4 of the Act which now governs authors' rights. Moreover, this principle is manifestly in keeping with the dictates of equitable justice, for while the copyright of the author of the original is of course entitled to protection in all respects, and he therefore has the exclusive right to translate the work (article 18 (i) of the Act), it is no less true that a translation, being a personal creative work, is likewise entitled to protection because it is wrong for any person to appropriate the product of the intellectual work of another.

"We would add that as we study the problem more closely we perceive a sharp distinction between the fact of the translation, on the one hand, and the fact of its publication in violation of the copyright of the author of the original, on the other hand. Of these, the second is unlawful, since only the author of the original work has the right to the economic use of his creation. The first is not unlawful since any person is free to translate any work into another language (e.g., for personal amusement, for study or any other reason); and the finished product

in which the effort of translation takes shape can belong only to the person who made it."

Having thus upheld the right to protection of even an unauthorized translation, the court considered the issue of damages and decided as follows: "There seems to be no doubt that the mere fact of making a translation cannot in itself be unlawful, because (as has been observed above) this is a free activity of the human mind which cannot *per se* be harmful to any one; but it is equally evident that if the translation is not an end in itself but is intended for publication, the translator is liable for any damages caused by the publication, if the publication is unlawful and, *a fortiori*, if he knows it to be unlawful."

The other decision was one rendered by the Court of Appeal of Milan, dated 7 May 1954 (*Giurisprudenza italiana*, first part, II, 704). It states the principle that the publisher of a periodical is not entitled to publish and sell separately, for his own profit, one of the articles published in that periodical, it being immaterial whether the separate publication takes the form of an extract or of a separate volume; but that the author's moral rights are not infringed by the reproduction, without a table of contents, of a contribution which appeared in a collective work by several contributors, if there was no table of contents in the work from which the contribution was extracted.

The decision states: "The lower court held that if the publisher of a collective work, without the consent of the person concerned, sells the work of an individual contributor separately, that publisher is committing an unlawful act. The appellant Giuffrè does not contest the principle, but submits that it is inapplicable, since the copies placed on sale were printed in the expectation (which was not in the event fulfilled) that the author of the contribution would want more copies for his own professional purposes (to wit, for the purposes of an examination) that he was entitled to receive under the contributors' agreement. But the issue cannot be thus divided, for the mere fact that a publisher sells an individual's work implies that that work has been economically used by a person other than its author, who, by virtue of the provisions of article 3, last part, cap. 38, read in conjunction with article 42 of Act No. 633 of 22 April 1941, has the exclusive copyright.

"The publisher is not entitled to encroach upon the rights of others. On this point, the decision appealed against is unimpeachable. The same cannot be said, however, of the second point, which relates to what has been described as a violation of the author's moral right by the separate publication of the work without a table of contents and summary."

The court proceeds, saying in substance: "Inasmuch as Azzolina's paper appeared in the periodical *Il diritto fallimentare* without table of contents, all the copies of the extract being consequently without a

table of contents, the appellant publisher is therefore not liable."

The *freedom of religion and worship*, proclaimed by article 18 of the Declaration of Human Rights and guaranteed by article 19 of the Italian Constitution, is the subject of a decision by the magistrate's court of Rodi Garganico, dated 14 July 1954 (*Giurisprudenza italiana*, 1954, part II, 382). This decision upholds the mandatory force and immediate applicability of the said article 19, in so far as it guarantees the right freely to profess religious convictions and to advocate religious doctrines. This decision is consistent with numerous earlier judicial rulings and is supported by the authoritative opinion of learned jurists (see, *inter alia*, court of Catania, 26 October 1950, *Dir. eccl.* 1951, p. 150; court of Palmi, 29 January 1949, *ibid.* 1951, p. 198, etc.). The Supreme Court, after at first treating article 19 as a declaration of principles (Court of Cassation, 11 October 1952, in *Giustizia penale*, 1953, II, col. 122), now seems to take the opposite view, through not in a clear-cut fashion. (Court of Cassation, 7 May 1953, in *Giustizia penale*, 1953, II, col. 966; this decision states that the provisions of articles 8 and 19 of the Constitution<sup>1</sup> do not belong to the category of provisions enacted to serve as mere guiding principles.)

The decision of the magistrate's court of Rodi Garganico says: "The Supreme Court, by a decision dated 7 February 1948 (in *Giurisprudenza italiana*, 1948, part II, 129), has ruled that 'the provisions which embody and guarantee civil rights are, *ex hypothesi*, mandatory and of immediate effect, since their application is not contingent on their enactment by the ordinary legislative process'. That point being settled, the questions to be answered in this particular case were: (1) Is article 19 of the Constitution, which provides, *inter alia*, that everyone has the right to make free profession of his own religious convictions... and to advocate the doctrines thereof, mandatory or is it not? (2) If the answer to the first question is that article 19 is mandatory, can that article be reconciled with article 113 of the Public Security Act<sup>2</sup> as read in conjunction with article 663 of the Penal Code? The court decided both questions in the affirmative.

"With reference to the first question, the court holds that article 19 of the Constitution, because it is complete in itself and contains a specific provision and because, furthermore, it does not by implication or expressly refer to anything to be done by the legislature in the future, must be regarded as mandatory and enforceable without further formality. Indeed, the article does not merely enunciate the

principle of religious freedom, but determines the limits within which such freedom is exercisable, in stipulating 'provided they [i.e., the forms of worship] are not rites which offend public morality'. There is now a whole range of statutory provisions (see Book II, chapter IX and article 726 of the Penal Code) enacted by the legislature for the protection of public morality and decency, so that no further action is required to put into effect the constitutional provision in question. The mandatory force of this provision is confirmed by the fact that article 1 of Act No. 1159 of 24 June 1929, which may be regarded as the precursor of article 19 of the Constitution, lays down the principle of the free exercise of religions other than the Catholic religion in terms more concise than those of the Constitution. And nobody has ever voiced any doubt about the mandatory force of the 1929 Act. Article 1 of that Act provides: 'Forms of worship other than that of the Roman Catholic Apostolic faith may be practised in the Kingdom, provided that they do not involve the propagation of principles or the observance of rites which are injurious to the public interest or repugnant to public decency. No restrictions shall apply to the practice (including the public practice) of such forms of worship...' Nor can it be maintained that article 19 is not mandatory because it was left to future legislators to determine the limits of the 'advocacy' referred to: as may be easily inferred from article 21 of the Constitution,<sup>3</sup> a religious doctrine may be advocated 'in word, in writing or by any other means of communication', subject to the proviso (and this is the limit of the right) that other legislative provisions enacted for the protection of other legal rights are not violated.

"Having ruled that article 19 of the Constitution is mandatory and *ipso facto* enforceable, we now have to answer only the second question: if the constitutional provision in question is held to be mandatory, must article 113 of the Public Security Act necessarily be regarded as having been repealed? The Supreme Court decided not to enter into the substance of the question (which is still in dispute) whether article 113 is to be regarded as having been repealed by article 21 of the Constitution, and ruled that 'the immediate applicability of article 19 is not incompatible with article 113 of the Public Security Act, which explicitly exempts what it terms ecclesiastical matter in so far as regulations governing the display, distribution and circulation of writings are already applicable to such matter in pursuance of other legislative provisions—and article 19 of the Constitution is precisely one of these other provisions.'"

In a case heard in 1953, the Court of Cassation (Penal Division)<sup>4</sup> decided that pursuant to Royal

<sup>1</sup> See below, p. 175, footnote 3.

<sup>2</sup> Article 113 of the Public Security Act says that, except as otherwise provided with respect to the periodical press and ecclesiastical matter, it is unlawful, without the permission of the local public security authorities, to distribute and circulate, in any public place or in any place accessible to the public, any writing, drawing, etc.

<sup>3</sup> See *Tearbook on Human Rights for 1947*, pp. 164–165.

<sup>4</sup> Case No. 2550, of 30 November, 1953 (*Giurisprudenza completa della Corte Suprema di Cassazione; Sezioni Penali*, published by the Istituto Italiano di Studi Legislativi, Vol. XXXIV, 1953, pp. 206 *et seq.*).



Legislative Decree No. 289 of 28 February 1930, religious meetings held in an unauthorized place come under the provisions currently applicable to public meetings (art. 18 of the consolidated text of the Public Security Act) and are subject to the relevant penalties in case of non-compliance.

The scope of article 18 of the Public Security Act has been fundamentally restricted by article 17 of the Constitution, which is a mandatory provision of immediate application. Nevertheless, freedom of assembly without previous notice, although more fully recognized by that provision, must, where religious matters are involved, remain subject to article 19 of the Constitution, which allows freedom of worship subject to the condition that the rites, even if performed in private, do not offend public morality.

In this judgement, the Supreme Court ruled on the appeal lodged by the *Procuratore della Repubblica* attached to the Court of Santa Maria di Capua Vetere against the judgement of the Pretore of Teano of 23 January 1953.

The appellant's complaint was that the Pretore of Teano had failed to impose the penalty prescribed by article 650 of the Penal Code<sup>1</sup> despite defiance of the *general* prohibition contained in article 2 of royal legislative decree No. 289 of 28 February 1930, which makes the maintenance of any place of worship other than a Roman Catholic establishment subject to official approval, and of the *specific* prohibition deriving from the fact that the Pentecostal Church at Riardo, where the worshippers had previously held public assemblies, had been closed by the *carabinieri*<sup>2</sup> on 16 October 1952 and that due notice of the closure had subsequently been served by the *carabinieri* authorities.

As regards the first point, the defence of the accused raised afresh the legal question whether the aforesaid provisions of the royal legislative decree of 1930 are compatible with the new principles stated in the Constitution regarding full freedom of worship, or whether that part of the legislative decree automatically ceased to have effect on the promulgation of those new constitutional principles (especially articles 8 and 19).<sup>3</sup>

<sup>1</sup> This article deals with the penalties for non-compliance with orders of the public authorities.

<sup>2</sup> The *carabinieri* are regarded as public security authorities. A circular from the Ministry of the Interior of 8 April 1953, No. 600-158, addressed to prefects throughout the republic, had ordered the dissolution of Pentecostal assemblies and the closure of their churches and chapels, on the grounds that their form of worship consisted of religious rites inconsistent with public order and harmful to the physical and moral welfare of the race.

<sup>3</sup> Art. 8: All religious denominations are equally free before the law. Religious denominations other than Catholic are entitled to organize themselves according to their own statutes, in so far as these do not conflict with the Italian legal order. Their relations with the State are governed by law on the basis of agreements with the respective representatives.

Art. 19: Everyone has the right to make free profession

The Court of Cassation held that the first hypothesis was the correct one; it had already ruled to that effect in judgement No. 1522 of 7 May 1953 of this same Penal Division.<sup>4</sup>

In the present instance, however, the penalties prescribed by article 650 would not be applicable, because the "measures" contemplated by that article do not generally comprise statutory or delegated legislation.

The Court nevertheless stressed that "it would be incorrect, in connexion with the prohibition contained in article 2 of the royal legislative decree of 1930, to contend that the rule provides for no penalty in case of breach", because, in the light of the final part of the article (to the effect that in other cases the provisions governing public meetings apply), the provision must obviously be read in conjunction with article 18 of the Public Security Act.<sup>5</sup> "The reference to this latter article was, moreover, *quoad substantiam* and not *quoad poenam*, so that even religious meetings in unauthorized places had to be shown in each instance to be of a sufficiently public nature to require the giving of prior notice. For this very reason, the Court finds that the Pretore was substantially correct in holding, in the contested judgement, that article 18 of the Public Security Act, which requires prior notice of meetings in a public place or in a place open to the public, has been fundamentally restricted in scope by article 17 of the Constitution,<sup>6</sup> which article has been held by this court in numerous judgements to be a mandatory provision of immediate application.

"Article 17 of the Constitution, it must be noted, provides that prior notice is only required in the case of meetings in public places, but meetings held in places open to the public are no longer subject to that condition.

"We should add, however, that freedom of assembly without previous notice, which has now been more fully recognized by the Constitution, must be exercised in a manner consistent not only with the conditions specified in the first sentence of that article, namely

of his own religious convictions in any form whatsoever, personally or as a member of an association; to advocate the doctrines thereof and to practise its worship in private or in public, provided they are not rites which offend public morality.

<sup>4</sup> This part of the Court's judgement was strongly criticized in the reporter's comment which states, *inter alia*, that "the provisions of that decree conflict both with the spirit and the explicit intention of the framers of the Constitution of the Italian Republic . . .".

<sup>5</sup> Public Security Act, art. 18 (1): "The organizers of any meeting in a public place or in a place open to the public shall give notice thereof to the Superintendent of Police at least three days in advance."

<sup>6</sup> Art. 17: Citizens have the right to meet in peaceful and unarmed assembly. No previous notice is required of meetings, even if held in places open to the public. Meetings in public places shall be subject to prior notice to the authorities, which may prohibit them only on substantiated grounds of public security or safety.

that the assembly must be peaceful and unarmed, but also, where religious matters are involved, with the provisions of article 19, which allows freedom of worship on condition that the rites, even *if performed in private*, do not offend public morality. In the present case, there is no evidence... of any acts contrary to public morality. Bearing this in mind as well as the indisputably private nature of the meeting place of the accused, the Court held that "the decision of the Pretore of Teano, who has ruled that no offence whatsoever had been proved, calls for no criticism on the Court's part."

As regards the second contention of the appellant's—namely, that the closing of the Pentecostal Church at Riardo was a measure pursuant to article 650 and "did not require an investigation into the legality of the measure..."—the Court stated that "it is not disputed that the order of closure and the subsequent notice referred to the performance of religious rites in the church"... and not to "rites performed in private in various places".

For those reasons the Court dismissed the appeal.

In a judgement (No. 127 of 17 January 1953) upholding a decision of the Rome Court of Appeal of 29 March 1952, and of concern to the *status of women*, the Court of Cassation (First Division) held:

"...The principle stated in article 3 of the Constitution, which declares that all citizens are equal before the law without distinction as to sex, cannot automatically be taken to imply that women have an equal right with men to be appointed as lay assessors in assize courts and in assize courts of appeal. The principle must be read in conjunction with article 51 of the Constitution, which provides that all

citizens of either sex may hold public offices or elective positions on a footing of equality 'in accordance with the requirements laid down by law'.

"Under the legislation currently in force (article 51 of the Constitution, article VII of the transitional provisions thereof and Act 287 of 10 April 1951 concerning the reorganization of the composition of assize courts) women cannot be appointed as assessors in assize courts or assize courts of appeal.

"The principle established by article 51 of the Constitution is not a mandatory rule, but a statement of general policy; hence the legislator, who must determine in each specific case the necessary qualifications for appointment to any given public office, has the power to depart from the principle enunciated in article 51 of the Constitution concerning the equality of the sexes.

"Without prejudice to the principle that a statute must be interpreted on the basis of what it actually says and that the work preparatory thereto is not a decisive factor in construing the scope of its provisions, the opinion of the Minister who submitted the statute to Parliament is bound to have some weight in its interpretation unless his opinion manifestly conflicts with the wording of the adopted text. (See No. 232 of 14 February 1949; note in Massimario, 48; judgement published in *Foro Italiano*, 1953, I, No. 161.)

"The legislator's intention to exclude women from appointment as lay assessors in assize courts and assize courts of appeal is also confirmed by the opinion to that effect expressed in the course of the preparatory work on Act No. 287 of 10 April 1951 by the Minister who proposed it." (*Massimario Foro Italiano*, 1953, No. 127, item 30).

## JAPAN

### NOTE<sup>1</sup>

The Welfare Annuity Insurance Act, No. 115, of 19 May 1954, was adopted with a view to contributing to the stabilization of the livelihood of workers and of their surviving families after their death, and the promotion of their welfare, by granting insurance benefits for old age, disease, death or retirement.

The Act concerning the Encouragement of Attendance at the Blind School, Dumb School and the School for Handicapped Children, No. 144, of 1 June 1954, was directed towards (a) providing for the

necessary aid to be given by the State and local public bodies to children of school age for attendance at the blind school, dumb school, and the school for handicapped children in accordance with the principle of equal access to education and in view of the special circumstances of attendance at these schools, and (b) increasing and encouraging obligatory education.

The Act for the Furtherance of Education in Remote Districts, No. 143, of 1 June 1954, was adopted with a view to improving standards of education in remote districts by stipulating the measures to be enforced by the State and the local public bodies for the furtherance of education in remote corners of the country in accordance with the principle of equal access to education and in view of the special educational circumstances.

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<sup>1</sup> Note prepared by Mr. Masanao Toda, Director, Civil Liberties Bureau, Ministry of Justice, Tokyo, government-appointed correspondent of the *Yearbook on Human Rights*. The Acts summarized in the note were promulgated in issues of the *Official Gazette* bearing respectively the dates mentioned in the note.

# HASHEMITE KINGDOM OF JORDAN

## JUVENILE REFORM ACT No. 16, OF 1954<sup>1</sup>

The Juvenile Reform Act of 1954, consisting of 28 articles, was first applied by the competent courts on 16 June 1954. The following is a summary of its more important provisions:

1. The term "young person" means any person of either sex between the ages of nine and eighteen.

2. If a young person is arrested and cannot be brought before the court immediately, the police officer shall release him on receipt of a formal undertaking, unless he is charged with homicide or some other serious offence.

3. If the young person is not released on bail, the court shall make an order committing him to a place of detention, instead of to a prison.

4. A court dealing with a charge against a young person shall be deemed to constitute a juvenile court, and it shall sit at a different time and in a different place from the time and place of its regular meetings.

5. A court of summary jurisdiction, when sitting as a juvenile court, shall deal with offences punishable by imprisonment or hard labour for a term not exceeding seven years. A court of first instance, when sitting as a juvenile court, shall deal with other criminal offences.

6. On the commencement of the proceedings, the court shall explain to the young person in simple language the substance of the charges preferred against him. If he pleads guilty, the court shall, before deciding what action to take in his regard, obtain a social report from the probation officer and be guided by the particulars it contains; provided that the judgement of the court shall be in the best interests of the person concerned.

7. No young person shall be sentenced to death or to hard labour.

8. A young person who commits an offence the penalty for which is death or hard labour for life shall be sentenced to detention for a term of not less than three years, if under fifteen years of age, and for a term of not less than five years if over fifteen. The term of detention shall be served in a reform institution under the Ministry of Social Affairs.

9. Where a young person is charged with an offence other than those mentioned above, the court may:

(1) Order his release on receipt of a formal undertaking from him, his guardian or any other person; or

(2) Sentence him to payment of a fine or of damages; or

(3) Sentence his father or guardian to payment of a fine or of damages; or

(4) Order his father or guardian to stand bail for his good conduct; or

(5) Make a probation order placing him under the supervision of a probation officer for a period of not less than one year nor more than three years; or

(6) Commit him to a place of detention if over thirteen years of age, for a term of not less than one month nor more than six months; or

(7) Send him for a period of not less than one year nor more than four years to a reform school designated for the purpose by the Minister of Social Affairs.

10. The court making a probation order shall select the probation officer who is to supervise the young person concerned. If the order is made in respect of a girl, the probation officer shall be a woman.

11. If a young person is convicted of an offence, no account shall be taken of previous convictions, and he shall not thereafter be liable to an increased penalty on commission of a second offence.

12. Any probation officer may bring before the juvenile court any person who appears to be under fifteen years of age, if

(a) He has found the said person to be in the care of a father or guardian unfit to take care of him, being an habitual criminal or drunkard or of a bad character;

(b) The said person is the legitimate or illegitimate daughter of a father who has been convicted of committing an indecent assault on any one of his daughters, whether legitimate or illegitimate;

(c) The said person keeps the company of common thieves or prostitutes;

(d) He has found the said person begging or receiving charity from the public even if he conceals the fact in any way;

(e) He has found the said person to be a vagrant, having no known home or abode, or having no visible means of support.

<sup>1</sup> Arabic text in *Official Gazette* No. 1182, of 16 May 1954, received through the courtesy of the Minister of Foreign Affairs. Translation by the United Nations Secretariat.

If it is satisfied that any of the above circumstances apply in his case, the juvenile court may make an order placing him under the supervision of one of the probation officers, or committing him to a reform institution for a period of not less than one year nor more than five years.

13. An officer, to be known as the chief probation officer, shall be appointed to administer the probation department. Sufficient probation officers shall be appointed to perform their duties under this Act in every *biwa* or district.

## NATIONALITY ACT No. 6, OF 4 FEBRUARY 1954

### SUMMARY<sup>1</sup>

According to this Act, a person shall be a Jordanian national if he acquired Jordanian nationality under the preceding laws of 1928 or 1949 or if, not being Jewish, he possessed Palestinian nationality before 15 May 1948 and, at the date of publication of this Act, was ordinarily resident in the Hashemite Kingdom of the Jordan. Any Arab who at the date of publication of the Act was resident in the kingdom and had resided there continuously for not less than fifteen years may acquire Jordanian nationality if he renounces his nationality of origin and the law of his country permits him to do so.

The wife of a Jordanian shall be a Jordanian national, and the wife of an alien shall be an alien. A woman who has acquired Jordanian nationality by marriage may renounce that nationality within two years from the death of her husband or at the dissolution of

her marriage by making a declaration to that effect. A woman who has lost her Jordanian nationality by marriage may recover it under the same conditions. Children, wherever born, of a Jordanian shall be Jordanians, and minor children of a person who loses Jordanian nationality shall lose it also, but may apply to recover it by making a declaration to that effect within two years of the date on which they attained full age.

A Jordanian not of Arab origin may renounce his Jordanian nationality and acquire the nationality of a foreign State; a Jordanian of Arab origin may renounce that nationality and acquire the nationality of an Arab State, or may, with the approval of the Council of Ministers, renounce that nationality and acquire the nationality of a foreign State.

A certificate of naturalization may be cancelled by the Council of Ministers with the approval of the King if the naturalized person has committed or attempted to commit any act deemed to endanger the security and safety of the State.

<sup>1</sup> An English translation of the complete text of this Act is to be found in *Laws concerning Nationality* (published in the United Nations Legislative Series, ST/LEG/SER.B/4), 1954.

# REPUBLIC OF KOREA

## CONSTITUTION OF THE REPUBLIC OF KOREA

of 12 July 1948,

as amended on 4 July 1952 and 27 November 1954<sup>1</sup>

*Introductory Note.*<sup>2</sup> The Constitution of the Republic of Korea has been twice amended, in July 1952 and November 1954, since its promulgation in 1948. The amendments of 1954 of greatest importance from the point of view of human rights may be classified under the following headings:

### 1. *Adoption of Systems of Direct Democracy*

a. *Referendum.* The new article 7-II introduced a popular referendum. There are three conditions for the referendum: (i) it will be conducted only on matters "pertaining to a national crisis which might limit the sovereignty of the Republic of Korea or cause a change in its territory"; (ii) it may be proposed only on legislation passed by the National Assembly; and (iii) the right of proposing a referendum rests exclusively with the people.

b. *Initiative.* Under the Constitution before amendment only the President and the Houses had the right to propose amendments to the Constitution. Article 98 as amended entitled also the people to propose constitutional amendments.

### 2. *Liberalization of the Economic Clauses (Arts. 85, 87, 88 and 89)*

The former economic provisions embodied the principle of public ownership and management of important industries. Experience, however, had shown that these provisions failed to meet their purpose satisfactorily, and the amendments to these articles provided for the principle of private ownership and management of such industries with a view to stimulating production and economic development.

### 3. *Linking of the Supreme Court and Courts Martial*

Formerly, the Constitution failed to refer to courts martial, and questions about the constitutionality of courts martial arose frequently. The new article 83-II provided for their constitutional basis and at the same time linked them with the Supreme Court, the latter being the court of final instance.

## PREAMBLE

*We, the people of Korea, possessing a glorious tradition and history from time immemorial, follow the great spirit of independence as manifested in the establishment of the Republic of Korea and by proclamation thereof of the whole world by the March 1st Movement in the year of Kimi (T.N. A.D. 1919).*

Now at this time we are engaged in the re-establishment of a democratic and independent State and are determined:

To consolidate national unity through justice, humanity and fraternity.

To establish a democratic system of government eliminating evil social customs of all kinds,

To afford equal opportunities to every person and to provide for the fullest development of the capacity of each individual in all the fields of political, economic, social and cultural life,

To require each person to discharge his duties and responsibilities,

of 1954 may be found in *Report of the United Nations Commission for the Unification and Rehabilitation of Korea (Official Records of the General Assembly, Tenth Session, Supplement No. 13, A/2947, New York, 1955, pp. 13-20)*. The English translation of the Constitution reproduced here was officially prepared by the Office of Public Information of the Republic of Korea, with the assistance of the Ministry of Justice.

Of the provisions here quoted, articles 31, 32, 85, 87, 88 and 89 appear as amended in 1954. Articles 7-II and 83-II were added to the Constitution in 1954. The remaining articles here quoted have not been amended since 1948, but their wording in English translation may differ from that published in *Yearbook on Human Rights for 1948*, since the Office of Public Information of the Republic of Korea has revised its official English translation of the Constitution.

<sup>2</sup> Introductory note based upon information kindly furnished by Colonel Ben C. Limb, Permanent Observer of Korea to the United Nations.

<sup>1</sup> English text received through the courtesy of Colonel Ben C. Limb, Permanent Observer of Korea to the United Nations. For the text of the original Constitution of 1948, see second part of the *Report of the United Nations Temporary Commission on Korea (Official Records of the General Assembly, Third Session, Supplement No. 9, A/575/Add.4, annex V)*. The provisions on human rights of the original Constitution were published in *Yearbook on Human Rights for 1948*, pp. 133-135. The complete text of the amended Constitution

To promote the welfare of the people at home and to strive to maintain permanent international peace and thereby to ensure the security, liberty and happiness of ourselves and our posterity eternally,

DO HEREBY, in the National Assembly, composed of our freely and duly elected representatives, ordain and establish this Constitution on the twelfth day of July in the year of Tangun four thousand two hundred and eighty-one (T.N. 12 July A.D. 1948).

## CHAPTER I

### GENERAL PROVISIONS

*Art. 1.* The Republic of Korea shall be a democratic and republican State.

*Art. 2.* The sovereignty of the Republic of Korea shall reside in the people. All State authority shall emanate from the people.

*Art. 3.* The requisites for Korean citizenship shall be determined by law.

*Art. 4.* The territory of the Republic of Korea shall consist of the Korean Peninsula and its accessory islands.

*Art. 5.* The Republic of Korea, in all fields of political, economic, social and cultural life, shall be responsible for respecting and guaranteeing the liberty, equality and initiative of each individual and for protecting and adjusting these for the purpose of promoting the general welfare.

*Art. 6.* The republic of Korea shall renounce all aggressive wars. The mission of the national armed forces shall be to perform the sacred duty of protecting the country.

*Art. 7.* Duly ratified and published treaties and the generally recognized rules of international law shall have the same effect as that of the law of Korea. The status of aliens shall be guaranteed within the scope of international law and treaties.

*Art. 7-II.* Legislation concerning important matters pertaining to a national crisis which might limit the sovereignty of the Republic of Korea or cause a change in its territory shall, after passage by the National Assembly, be referred to a national referendum for confirmation. Such confirmation shall require the valid affirmative votes of two-thirds or more of the voters in a referendum participated in by two-thirds or more of the voters eligible to vote for the election of members of the House of Representatives.

Such national referendum shall be initiated by the petition, within one month after passage of such legislation, of five hundred thousand or more of the voters qualified to vote for the election of members of the House of Representatives.

When confirmation is not obtained by such national referendum, the decision of the National Assembly in question shall become retroactively null and void.

Rules of procedure concerning such national referendum shall be decided by law.

## CHAPTER II

### RIGHTS AND DUTIES OF CITIZENS

*Art. 8.* All citizens shall be equal before the law. No discrimination as to political, economic or social life, based upon sex, religion or social position shall exist.

No privileged castes shall be recognized, nor ever be established hereafter.

The award of decorations or marks of honour in any form shall confer upon recipients only personal honour and no privileged status shall be created thereby.

*Art. 9.* All citizens shall enjoy personal liberty. No citizen shall be arrested, detained, searched, tried, punished, or subjected to compulsory labour except as provided by law.

In any case of arrest, detention or search, a warrant therefor shall be necessary; except that in any case of *flagrante delicto* or in any case where there is danger that the criminal may escape or that the evidence of the crime may be destroyed, the detecting authorities may request an *ex post facto* conformity with provisions prescribed by law.

To all persons who may be arrested or detained, the right to have the prompt assistance of counsel and the right to request the court for a review of the legality of the arrest or detention, shall be guaranteed.

*Art. 10.* All citizens shall be free from restrictions, except as specified by law, on domicile or the change thereof, and from trespasses on and searches of private premises.

*Art. 11.* The privacy of correspondence of all citizens shall remain inviolate and shall not be infringed except in accordance with law.

*Art. 12.* All citizens shall enjoy the freedom of religion and conscience. No state religion shall exist. Religion shall be severed from politics.

*Art. 13.* Citizens shall not, except as specified by law, be subjected to any restrictions on the freedom of speech, press, assembly and association.

*Art. 14.* All citizens shall have freedom of learning and the right to practise the sciences and arts. Rights of authors, inventors and artists shall be protected by law.

*Art. 15.* The right of property shall be guaranteed. Its nature and restrictions shall be defined by law.

The exercise of property rights shall conform to the welfare of the public.

The expropriation, use or the imposition of restrictions on private property for public purposes shall be accompanied by payment of just compensation in accordance with the provisions of law.

*Art. 16.* All citizens shall be entitled to equal opportunities of education. The attainment of at least an elementary education shall be compulsory and free of cost.

All educational institutions shall be administered under the supervision of the State and the organization of the educational system shall be determined by law.

*Art. 17.* All citizens shall have the right and duty to work.

The standards and conditions of labour shall be determined by law.

Special protection shall be accorded to the labour of women and children.

*Art. 18.* Freedom of association, collective bargaining and collective action of labourers shall be guaranteed within the law.

Workers employed in profit-earning private enterprises shall be entitled to share in the profits of such enterprises in accordance with the provisions of law.

*Art. 19.* Citizens who are incapable of earning their living due to old age, infirmity or such other reasons as may cause incapability to work, shall be protected by the State in accordance with the provisions of law.

*Art. 20.* Marriage shall be based on the equality of men and women. The purity of marriage and the health of the family shall receive the special protection of the State.

*Art. 21.* All citizens shall have the right to submit written petitions to any governmental agency.

The Government shall be obliged to consider such petitions.

*Art. 22.* Citizens shall have the right to be tried in conformity with the law by judges authorized and directed by law.

*Art. 23.* No citizen shall be prosecuted for a criminal offence unless such act shall have constituted a crime prescribed by law at the time it was committed, nor be placed in double jeopardy.

*Art. 24.* All defendants in criminal cases shall have the right to be tried in public without delay unless there is proper cause for not doing so.

When a defendant in a criminal case, having been detained, is thereafter found not guilty, he shall have the right to claim compensation by the Government in accordance with the provisions of law.

*Art. 25.* All citizens shall have the right to elect

public officials in conformity with the provisions of law.

*Art. 26.* All citizens shall have the right to hold public office in accordance with the provisions of law.

*Art. 27.* Public officials shall be the trustees of the sovereign people and shall at all times be responsible to the people. All citizens shall have the right to petition for the removal of public officials who have acted unlawfully.

Citizens who have suffered damages by unlawful acts of public officials done in the exercise of their official duties shall have the right to request compensation by the Government or the public corporate bodies concerned; however, the civil or criminal liability of the public officials concerned shall not be exempted thereby.

*Art. 28.* Liberties and rights of the people not enumerated in this Constitution shall not be ignored.

Laws imposing restrictions upon the liberties and rights of citizens shall be enacted only when necessary for the maintenance of public order or the welfare of the community.

*Art. 29.* All citizens shall have the duty to pay taxes levied in accordance with the provisions of law.

*Art. 30.* All citizens shall have the duty to defend the national territory in accordance with the provisions of law.

### CHAPTER III

#### THE NATIONAL ASSEMBLY

*Art. 31.* The legislative power shall be exercised by the National Assembly.

The National Assembly shall consist of the House of Representatives and the House of Councillors.

*Art. 32.* Each House shall be composed of members elected by universal, equal, direct and secret vote.

No member of either House may serve concurrently as a member of the other House.

The details for the election of, and the number of members of, the National Assembly shall be determined by law.

...

### CHAPTER IV

#### THE EXECUTIVE

##### Section 1

##### THE PRESIDENT

...

*Art. 64.* The President shall have power to proclaim a state of siege in accordance with the provisions of law.

...



## CHAPTER V THE COURTS

...

*Art. 83.* Trials and the pronouncement of judgments shall be open to the public; however, a trial may be closed to the public by an order of the court when it finds that the holding of a public trial would be likely to disturb the public peace and order or be dangerous to public morals.

*Art. 83-II.* Courts martial having jurisdiction of military offences may be established. However, appeals from kinds of judgements designated by law shall be within the jurisdiction of the Supreme Court.

The organization and powers of courts martial and qualifications for members thereof shall be determined by law.

## CHAPTER VI ECONOMY

*Art. 84.* The principle of the economic order of the Republic of Korea shall be to attain social justice, to fulfil the basic requirements of all citizens and to encourage the development of a balanced national economy;

The economic freedom of each individual shall be guaranteed within these limits.

*Art. 85.* Licence to exploit, develop or utilize mines and other important underground resources, marine resources, water power and all other economically available natural powers may be granted for limited periods in accordance with the provisions of law.

*Art. 86.* Farmland shall be distributed to farmers. The method of distribution, the extent of possession, and the nature of restrictions of ownership shall be determined by law.

*Art. 87.* Foreign trade shall be controlled by the Government in accordance with the provisions of law.

*Art. 88.* Private enterprises shall not be transferred to state or public ownership, except in cases specifically designated by law to meet urgent necessities of national defence or national life, nor shall their management or operation be controlled by the State or by juridical persons organized by public law.

*Art. 89.* Article 15, paragraph 3 of this Constitution shall be applicable to the expropriation of farmland as provided in article 86, and shall also be applicable to the transfer of private enterprises to the State or to public ownership as provided in the foregoing article.

...

*Art. 98.* A motion to amend the Constitution shall be introduced either by the President, by one-third or more of the members of either the House of Representatives or the House of Councillors duly elected and seated, or by the concurrence of 500,000 or more of the eligible voters for the election of representatives.

Proposed amendments to the Constitution shall be announced by the President to the public.

The period for an announcement as prescribed in the foregoing paragraph shall be not less than thirty days' duration.

A decision on a proposed amendment to the Constitution shall require the concurrence of two-thirds or more of the members of each House duly elected and seated.

When an amendment to the Constitution has been adopted, the President shall promulgate it immediately. However, if a decision on a proposed amendment to the Constitution is rejected by popular vote, as provided in article 7-II, the President shall promulgate such rejection as soon as the result of such vote is known and announce the decision has become retroactively null and void.

The provisions of articles 1, 2 and 7-II shall not be changed or abolished.

## LEGISLATION

CODE OF CRIMINAL PROCEDURE<sup>1</sup>

Act No. 341 of 23 September 1954

## BOOK I.—GENERAL PROVISIONS

*Chapter I.—Jurisdiction of Courts*

...

*Art. 15 (Request for transfer of jurisdiction).* In the following cases, a prosecutor or an accused may move the next higher court to effect a change of jurisdiction:

1. When for a legal reason, or owing to special circumstances, the competent court is unable to exercise judicial power.

2. When, owing to the nature of the offence, the popular sentiment of the district, the circumstances of the proceedings or any other circumstances, there is fear that an impartial trial cannot be held.

...

*Chapter IV.—Defence*

*Art. 30 (Persons entitled to select defence counsel).* (1) The accused or suspect may select a defence counsel.

(2) The legal representative, spouse, lineal relatives, brother and sister, or the head of the house of the accused or suspect may independently select a defence counsel.

*Art. 31 (Qualification of defence counsel and special defence counsel).* A counsel shall be selected from among the attorneys-at-law. However, in special circumstances, the courts, other than the Supreme Court, may permit the selection, as counsel, of one who is not an attorney-at-law.

...

*Art. 33 (Defence counsel selected ex officio).* In the following cases, if there is no counsel, the court shall select a counsel *ex officio*:

1. Where the accused is a minor.
2. Where the accused is seventy years of age or over.
3. Where the accused is deaf or mute.
4. Where the accused is suspected of mental unsoundness.
5. Where the accused is unable to select a counsel because of poverty or any other reason.

*Art. 34 (Interview with the accused or suspect).* The defence counsel or a person who is to become a defence counsel may have an interview with the

accused or suspect who is placed under physical restraint, deliver or receive any documents or any other things and cause the accused or suspect to consult a doctor.

*Art. 35 (Inspection or copying of documents or article of evidence).*

(1) The defence counsel may inspect or copy documents or articles of evidence relating to the litigation.

(2) He shall obtain the permission of the prosecutor or presiding judge in order to copy such articles of evidence. However, delay in granting such permission shall not prejudice the rights of the accused or suspect.

...

*Chapter VI.—Documents*

...

*Art. 55 (Request for inspection of protocol of public trial).* (1) In absence of defence counsel, the accused may request the inspection of the protocol of public trial.

(2) If the accused is unable to read the protocol, he may request that the protocol be read to him.

(3) In the circumstances of the preceding paragraph, the presiding judge may advise the accused concerning his rights in relation to the protocol.

...

*Chapter IX.—Summons and Detention of the Accused*

...

*Art. 70 (Reason for detention).* (1) The court may detain the accused when there is reasonable ground to suspect that he has committed a crime and:

1. The accused has no fixed dwelling, or
2. There is reasonable ground to suspect that he may destroy evidence, or
3. He has escaped or there is reasonable ground to suspect that he may escape.

(2) Where a case involves a fine not exceeding fifteen thousand hwan, detention or minor fine, the accused shall not be detained unless he has no fixed dwelling.

*Art. 71 (Effect of production).* The accused who has been produced shall be released within twenty-four hours from the time he was brought to court when it is determined to be unnecessary to detain him.

*Art. 72 (Detention or notice of criminal fact).* The accused shall not be placed under detention before the court has informed him of the gist of facts con-

<sup>1</sup> English translation of Korean text (published in *Official Gazette* No. 1185) received through the courtesy of Colonel Ben C. Limb, Permanent Observer of Korea to the United Nations. The Code came into force on 23 September 1954.

stituting the offence and of the fact that he may select defence counsel and before the court has given him the opportunity to defend himself.

*Art. 73 (Issuance of warrant).* The summons or arrest of an accused shall be effected by issuing a writ of summons, or a warrant of arrest.

...

*Art. 86 (Provisional detention of the accused under guard).* When the accused against whom a warrant of detention has been executed is to be kept under guard, he may, if necessary, be detained provisionally in the nearest prison.

*Art. 87 (Notice of detention).* (1) When the accused is detained his defence counsel shall be notified of the gist of facts concerning the case, the time of detention and the place. If the accused does not have a defence counsel, the person designated by the accused from among the persons mentioned in paragraph 2 of article 30 shall be informed of the facts of the case and that he may select a defence counsel.

(2) The notice provided for in the preceding paragraph shall be made in writing within three days after the accused has been detained.

*Art. 88 (Detention and notice of facts concerning public action).* When the accused is detained, he shall be informed of the facts concerning the public action against him and of the fact that he may select his defence counsel.

*Art. 89 (Interview with the detained accused).* The accused who is under detention may, in so far as laws permit, talk with any persons, or deliver to or receive from them documents or other things and also receive medical treatment from a doctor.

*Art. 90 (Application for defence counsel).* (1) The accused who has been detained may apply to the court or to the chief of a prison or his substitute, for the selection of a named defence counsel.

(2) The court or the chief of prison or his substitute who has received such an application shall give notice of such fact to the advocate designated by the accused.

*Art. 91 (Interview with person other than lawyer).* When there is reasonable ground to suspect that an accused under detention may escape or destroy evidence, a court may, upon request of a public prosecutor or *ex officio*, forbid him, by a ruling, to talk with persons other than those mentioned in article 34, or to examine documents or other things which he may receive from or deliver to such persons, and further forbid him to deliver, receive, or seize such things. However, he shall not be forbidden to receive clothing, food or medical supplies nor shall they be seized.

*Art. 92 (Detention period and its renewal).* (1) A period of detention shall not exceed two months. In

case the continuance of the detention is necessary, the period of detention may be renewed twice only by a ruling.

(2) The period of the renewed detention shall also not exceed two months.

*Art. 93 (Rescission of detention).* When the grounds or necessity for detention have ceased to exist, the court shall, upon request of a public prosecutor, the accused or his defence counsel or persons specified in paragraph 2 of article 30, or *ex officio*, rescind the detention, by means of a ruling.

*Art. 94 (Request for release on bail).* The accused under detention or his defence counsel or person specified in paragraph (2) of article 30 may request release of the accused on bail.

*Art. 95 (Essential release on bail).* When a request for release on bail has been made, it must be allowed except in the following cases:

1. Where the accused is charged with an offence punishable with death penalty, or penal servitude or imprisonment for a definite period of for more than ten years.

2. Where there is reasonable ground to suspect that the accused has destroyed or may destroy evidence.

3. Where there is reasonable ground to suspect that the accused tried to escape or may escape.

4. Where the dwelling of the accused is unknown.

*Art. 96 (Release on bail ex officio).* A court may, by a ruling, if it deems it proper, permit release on bail upon request of those who are specified in the provision of article 94 or *ex officio*, irrespective of the provisions of the preceding article.

*Art. 97 (Release on bail and opinion of public prosecutor).*

(1) A court shall hear the opinion of a public prosecutor before it renders a ruling to allow release on bail. However, when a public prosecutor does not express his opinion within three days, it shall be deemed as concurrence with permission for release on bail.

(2) Appeal to higher court may not be made against a ruling granting release on bail.

*Art. 98 (Release on bail and bail money).* (1) Where release on bail is granted, an amount of bail money sufficient and adequate to insure the presence of the accused shall be determined by consideration of the following items:

1. The nature and circumstances of the offence.

2. Weight of evidence against the accused.

3. Any previous offence, and his character, circumstances and financial ability.

(2) The court shall not fix bail money beyond the financial ability of the accused.

*Art. 99 (Condition of release on bail).* When release on bail is granted, restriction may be imposed on the dwelling of the accused, or any other proper conditions may be imposed.

...

#### *Chapter X.—Seizure and Search*

*Art. 106 (Seizure).* (1) When it is necessary, a court may seize any articles which it believes may be used as evidence or liable to confiscation, except as otherwise provided in this or other laws.

(2) A court may designate articles to be seized and order the owner, possessor, or custodian thereof to produce such articles.

*Art. 107 (Seizure of postal matters).* (1) A court may seize or cause to be produced postal matters or papers relating to telegrams dispatched by or to the accused, which are in the custody or possession of a government office or any other person transacting communication business.

(2) Postal matters or papers relating to telegrams other than those mentioned in the preceding paragraph, which are in the custody of a government office or any other person transacting communication business, may be seized or caused to be produced, only when there are circumstances which warrant their being considered to be connected with the case in hand.

(3) When any disposition has been effected under the provisions of the two preceding paragraphs, notice of such fact shall be given to the sender or to the addressee. However, this shall not apply if there is apprehension that such notification may obstruct judicial proceedings.

*Art. 108 (Seizure of voluntarily produced articles).* Articles which have been dropped or left or voluntarily produced by their owner, possessor or custodian may be retained without a writ of seizure.

*Art. 109 (Search).* (1) A court may, when deemed necessary, search the person, effects or dwelling or any other place of the accused.

(2) The person, effects or dwelling or any other place of a person other than the accused may be searched only when there are circumstances which warrant the belief that there are articles liable to seizure there.

...

*Art. 112 (Professional secrets and seizure).* A person who is, or was, a licensed advocate, patent attorney, notary public, public accountant, public scrivener, doctor, herb doctor, dentist, pharmacist, druggist, midwife, nurse, or a religious functionary may resist

seizure of articles held in his custody or possession in consequence of a mandate he has received in the course of his profession and which relates to secrets of other persons. However, this shall not apply if the principal has consented to such seizure, or if it is necessary for important interests of the State.

*Art. 113 (Warrant of seizure or of search).* A warrant of seizure or of search shall be issued in case a seizure or search is to be effected other than in open court.

...

*Art. 116 (Disclosure prohibited).* In the execution of seizure or search, the person who executes it shall not disclose information to unauthorized persons and shall take necessary caution not to injure the reputation of others.

...

*Art. 120 (Execution of warrant).* In the execution of a warrant of seizure or search, locks may be removed or seals opened, or any other necessary measures taken.

*Art. 121 (Execution of warrant and presence of the parties).* A public prosecutor, the accused or his defence counsel may be present when a warrant of seizure or of search is being executed.

...

*Art. 124 (Search of female).* When the person of a woman is searched, another woman of full age shall be present.

...

*Art. 137 (Execution of warrant of arrest and search).* When it is necessary for the purpose of executing a warrant of arrest, a public prosecutor, or judicial police official may enter the dwelling of a person, or the premises, building, airplane, vessel, or vehicle which are guarded, for search of the accused.

...

#### *Chapter XI.—Evidence by Inspection*

...

*Art. 141 (Caution for physical examination).* (1) In examining persons, the sex, age, condition of health and other circumstances of the person to be inspected must be taken into consideration and measures taken, in the choice of the method, not to damage his or her health and reputation.

(2) The inspection of a person who is not the accused may be carried out only when there is a cogent reason indicating a source of evidence.

(3) When the person of a woman is examined, a doctor or another woman of full age shall be present.

(4) In dissecting a corpse or opening a grave, proper respect for the remains shall be observed, and the family shall be notified in advance.

...

*Art. 143 (Restriction of time).* (1) Before sunrise and after sunset, the dwelling of a person, or the premises, buildings, airplane, vessel or vehicles guarded by persons may be entered for the purpose of inspection only with the consent of the occupant or keeper or person acting for them. However, this shall not apply when there is apprehension that the object of inspection might not be available after sunrise.

(2) Inspection commenced before sunset may be continued after sunset.

(3) In the places mentioned in article 126, the restriction specified in the first paragraph need not be observed.

...

#### *Chapter XIV.—Interpretation and Translation*

*Art. 180 (Interpretation).* If a person not versed in the Korean language is required to make a statement, an interpreter shall be provided to interpret.

*Art. 181 (Interpreter for Deaf or Mute).* If a deaf or mute person is required to make a statement, an interpreter shall be provided to interpret.

*Art. 182 (Translation).* Letters, signs or marks not in the Korean language shall be translated.

...

### BOOK II.—FIRST INSTANCE

#### *Chapter I.—Investigation*

...

*Art. 198 (Secrecy).* The investigation by a public prosecutor, judicial police official or others concerned with investigation shall maintain secrecy in order not to violate the personal rights of a suspect or other person, shall not cause undue interference of the rights of others in the course of the investigation.

*Art. 199 (Investigation and necessary examination).* (1) Necessary examinations may be made in order to carry out investigations. Compulsory measures shall not be taken except when authorized by law.

...

*Art. 201 (Detention).* (1) If there is a proper reason to suspect that an offence has been committed by the suspect, and there is a reason applicable to any item of paragraph (1) of article 70, the public prosecutor or judicial police official may arrest him upon a warrant of arrest issued by the judge of a competent district court. In respect to an offence punishable with a fine not exceeding fifteen thousand hwan, detention or minor fine, such arrest shall be effected only in case the suspect has no fixed dwelling.

(2) When a warrant of arrest is requested, pertinent data for detention shall be presented.

(3) When a judge of a district court deems that there is a good reason for the request mentioned in

the paragraph 1, he shall issue a warrant of arrest. When a request is denied, the reason therefor shall be entered in the request and returned to the prosecutor who presented it.

(4) A person arrested according to the provisions of the preceding three paragraphs, or his defence counsel or legal representative, or his spouse or any of his lineal relations, or his brother or sister, head of house, or family, may ask the jurisdictional court to examine whether an arrest is legal or not.

(5) A court which has received a demand under the preceding paragraph shall, without delay, investigate the conditions of the arrest and deny the demand if there are reasonable grounds to support the arrest. However, the court shall order the release of a person arrested by means of a ruling, when it deems the arrest illegal.

(6) An appeal may be lodged only against the rule dismissing the demand mentioned in the preceding paragraph.

*Art. 202 (Detention period by judicial police official).* When judicial police officials arrest a suspect, the suspect shall be released if he is not transferred to the public prosecutor within ten days.

*Art. 203 (Detention period by prosecutor).* If a prosecutor arrests a suspect or receives a suspect from a judicial police official, the suspect shall be released within ten days, if a public action is not instituted.

*Art. 204 (Issue of warrant of arrest and report to the court).* When a suspect is not arrested or an arrested suspect is released, a public prosecutor shall inform the issuing court in writing as to the reason therefor without delay.

*Art. 205 (Extension of detention period).* (1) A judge of district court may, if reasonable cause to continue the investigation is shown, extend the period prescribed in article 203 upon request of a public prosecutor. Only one such extension shall be granted, for not longer than ten days.

(2) In the case of the request mentioned in the preceding paragraph, the grounds necessary for such an extension shall be stated.

*Art. 206 (Urgent arrest).* When there are sufficient grounds to suspect the commission of an offence punishable by death penalty or penal servitude or imprisonment for an indeterminate period or for three years or more, and there exist the conditions stated in item 2 or 3 of paragraph (1) of article 70, and if, in addition, because of great urgency, a warrant of arrest cannot be obtained beforehand from a judge, then a public prosecutor or judicial police official may, upon statement of reasons therefor, apprehend the suspect.

*Art. 207 (Urgent arrest and term of warrant).* (1) A public prosecutor or judicial police official, when

he deems it necessary to detain a suspect arrested according to the provisions of the preceding paragraph, must obtain the issuance of a warrant of arrest within forty-eight hours counting from the time of the arrest in city or *Gun* in which there is a judge of a district court, or five days if in a city or *Gun* in which there is no judge of a district court.

(2) If the issuance of a warrant of arrest is not obtained, the suspect shall be released immediately.

(3) An arrested person released in accordance with the provision of the preceding paragraph shall not be arrested in connexion with the same offence without issuance of a warrant.

*Art. 208 (Prohibition of re-arrest).* (1) A person arrested who is released by a public prosecutor or judicial police official shall not be arrested again in connexion with the same act.

(2) For the purposes of the preceding paragraph, acts which are done simultaneously for the same purpose or as means or result of the crime shall be regarded as one act.

[Articles 211-214 deal with arrest of flagrant offenders.]

...

*Art. 216 (Compulsory disposition without warrant).* (1) When a public prosecutor or a judicial police official arrests a suspect according to the provisions of articles 201 or 206 or arrests a flagrant offender, he may, if necessary, take the following measures:

1. Enter the dwelling of a person or the premises, building, airplane, vessel, or a vehicle guarded by persons and search for the suspect.

2. Seize, search and inspect at the *locus* of the arrest.  
(2) The provisions of item 2 of the preceding paragraph shall apply *mutatis mutandis* to a case in which a public prosecutor or judicial police official executes a warrant of arrest.

*Art. 217 (Seizure without warrant).* (1) A prosecutor or judicial police official may, in respect of an article which is possessed, carried, or kept by a person who is subject to arrest in accordance with the provisions of article 206, seize, search or inspect without a warrant for the period prescribed in the article 207.

(2) An article seized in accordance with item 2 of paragraph (1) of the preceding article shall be immediately returned unless warrant of arrest is issued. However, when further seizure is deemed necessary, only the warrant of seizure or of search shall be issued.

...

### Chapter III—Public Trial

#### SECTION I.—PREPARATION OF PUBLIC TRIAL AND PROCEURE OF PUBLIC TRIAL

...

*Art. 280 (Prohibition of physical restriction in court).* The accused in a public trial court shall be subject

to no physical restraint. However, guards may be placed over the accused to prevent violent action or escape.

...

*Art. 282 (Necessity of defence counsel).* Where the offence charged is punishable with death, penal servitude or imprisonment for an indeterminate period or for maximum period of not less than three years, public trials shall not be conducted without defence counsel. However, this shall not apply when only judgement remains to be pronounced.

*Art. 283 (Defence counsel selected ex officio).* In the case of each item of article 33 or of the preceding article, when no defence counsel has been selected or defence counsel does not appear, the court may, *ex officio*, assign defence counsel.

...

*Art. 286 (Statement by the accused).* The presiding judge shall accord the accused time to state facts favourable to his case.

...

*Art. 293 (Opinion of the accused after examination).* The presiding judge shall ask the accused for his opinion concerning the examination of articles of evidence and shall inform him that he can apply for necessary examination of evidence for the protection of his rights.

...

*Art. 306 (Suspension of procedure of public trial).* (1) If the accused is of unsound mind, the public trial may be suspended, during the continuance of such state, by the court on request of a public prosecutor, the accused or his defence counsel, or by means of a ruling *ex officio*.

(2) When the accused is unable to appear in the court because of sickness, the trial shall be stayed until it is possible for him to appear.

(3) Before staying the trial in accordance with the preceding two paragraphs, a court shall hear the opinion of a doctor.

(4) When the accused is to be pronounced innocent, acquitted, exempted from punishment, or the public action is to be dismissed, the decision shall be made without the accused appearing in the court notwithstanding the provision of paragraph (1) and paragraph (2).

(5) The provisions of paragraph (1) and paragraph (2) shall not apply in cases where a proxy may appear in the court in accordance with the provision of article 277.

#### SECTION II.—EVIDENCE

...

*Art. 309 (False evidence).* The confession of an accused extracted by torture, violence or threat or

made after prolonged arrest or detention, or suspected to have been made involuntarily, shall not be admitted as evidence of guilt.

...

*Art. 317 (Voluntary statements).* (1) Oral statements given by an accused or a person other than the accused shall not be admitted as evidence unless the statements are made voluntarily.

(2) A document which contains oral statements referred to in the preceding paragraph shall not be admitted as evidence unless it is proved that they were made voluntarily.

(3) When a part of a protocol refers to evidence by inspection and part to oral statement given by the accused or a person other than the accused, only the latter part thereof shall be governed by the preceding two paragraphs.

...

[Book III deals with appeals; Book IV deals with special trial proceedings: Chapter I of this book deals with reopening of procedure, chapter II with extraordinary appeals and chapter III with summary procedure, which may be ordered by a district court, on a public prosecutor's demand, in cases in which the court may impose a fine or confiscation.]

#### BOOK V.—EXECUTION OF DECISION

...

[Art. 463-469 deal with execution of the death penalty. Art. 469 reads as follows.]

*Art. 469 (Suspension of death penalty).* (1) If a person condemned to death is in a state of unsound mind or a woman condemned to death is pregnant, the execution shall be stayed by order of the Minister of Justice.

(2) When the execution of the death penalty has

been stayed under the provisions of the preceding paragraph, the penalty shall be executed by order of the Minister of Justice subsequent to recovery from the state of unsound mind or after delivery.

....

*Art. 471 (Suspension of execution of punishment).*

(1) The execution of penal servitude, imprisonment or detention may be stayed in the following cases, subject to the direction of a public prosecutor of the public prosecutor's office corresponding to the court which has pronounced the penalty or of a public prosecutor of the public prosecutor's office having jurisdiction over the place where the condemned is situated:

1. If the health of condemned will be seriously impaired as a result of the execution of penalty or there is apprehension that he will not survive it.

2. If the condemned is seventy years of age or over.

3. If the condemned is in the sixth month of pregnancy or more.

4. If sixty days have not elapsed since the condemned was delivered of a child.

5. If the lineal ascendants of the condemned are seventy years of age or over, or crippled or seriously ill, and there is no other relative to look after them.

6. If the lineal descendants of the condemned are in their infancy and there is no other relative to look after them.

7. If there is any other valid reason.

(2) The public prosecutor must obtain permission from the chief prosecutor in the prosecutor's office to which he is attached in matters pertaining to the preceding paragraph.

...

### MINOR OFFENCES ACT

Act No. 316, promulgated 1 April 1954<sup>1</sup>

*Art. 1.* Persons who fall under any of the following items shall be punished by detention or minor fine:

...

(9) Persons who have published in a newspaper, magazine or other publication a false statement concerning the private or business affairs of another person or who with intent to obtain unjust enrichment accept money or any other valuable thing for publishing or refraining from publishing any such statement regardless of its truth or falsity (See also Criminal Code, Articles 309,<sup>2</sup> 347 and 350).

...

(27) Persons who without good reason stand in the way of, crowd or follow other persons in such a manner as to cause annoyance or apprehension. (See also Criminal Code, articles 283 and 311<sup>2</sup>).

(28) Persons who have by any extremely disorderly act or talking annoyed any considerable number of persons in any public place thereby disturbing the public peace.

(29) Persons who have disturbed the tranquillity of a neighbourhood by making unusually loud noises by means of the human voice, musical instruments, radio or any other means.

...

<sup>1</sup> Extracts from the English translation kindly furnished by Colonel Ben C. Limb, Permanent Observer of Korea to the United Nations.

<sup>2</sup> See *Tearbook on Human Rights for 1953*, p. 177.

## JUDICIAL DECISION

RIGHT TO DEFENCE COUNSEL—DECREE ON SPECIAL MEASURES FOR  
PUNISHMENT OF CRIMINALS IN THE EMERGENCY SITUATION—  
CODE OF CRIMINAL PROCEDURE

## CASE OF PARK RIN YONG

*Supreme Court*<sup>1</sup>

5 October 1954

*The facts.* On 22 January 1951, the Kong-Ju branch court had found Park Rin Yong guilty of violations of articles 3(1) and (2), 4(3) and 5 of the Decree of 28 June 1950 on special measures for punishment of criminals in the emergency situation<sup>2</sup>, and had sentenced him to death. His offence had consisted of having voluntarily taken up arms against the Republic of Korea during the hostilities beginning 25 June 1950, abducting persons, killing several members of the defence forces of the republic, and setting fire to buildings. In his trial he had not had the assistance of defence counsel, and on this ground the

Prosecutor-General launched an extraordinary appeal to the Supreme Court.

*Held.* That the conviction be quashed on the ground that the condemned man had not enjoyed the right provided by article 334 of the Code of Criminal Procedure then in force, which provided that no trial was to be opened until defence counsel had been appointed, when the charges involved crimes punishable by the death penalty (and certain other types of penalty), and that if no counsel had been otherwise appointed the presiding judge was to assign such counsel.<sup>3</sup> The Supreme Court found no legal justification for making an exception in the present case and the holding of trial without defence counsel was characterized as being "against due process of law" and "contrary to the spirit of guaranteeing human rights provided for in the Constitution".

<sup>1</sup> Summary based upon the trial record and commentary thereon kindly made available in English translation by Colonel Ben C. Limb, Permanent Observer of Korea to the United Nations.

<sup>2</sup> See *Tearbook on Human Rights for 1951*, pp. 216-217.

<sup>3</sup> Compare articles 282-283 of the 1954 Code of Criminal Procedure, quoted on p.188, above.



# LAOS

## NOTE<sup>1</sup>

### LEGISLATION PROHIBITING SLAVERY AND SIMILAR PRACTICES

Article 182 of the Penal Code<sup>2</sup> of 1927 provides as follows:

"Any person convicted of having abducted, sold, assigned, pledged or hired out another person, irrespective of age, sex or status, shall be liable to a penalty of not less than five and not more than twenty years, hard labour.

"The receiver shall be punished as an accomplice.

"Slavery is prohibited.

"Without prejudice to the penalties provided for in this Code, any agreement whose object is to deprive a third person of his liberty, whether gratuitously or for gain shall be considered null and void."

### LEGISLATION PROHIBITING CORPORAL PUNISHMENT

Article 4 of the Penal Code of 1927 provides as follows:

"All corporal punishment is strictly prohibited, and any administrative or judicial official or agent inflicting such punishment shall be liable to the penalties provided for in this Code in addition to any further penalties to which he may be liable by virtue of his status."

### REGULATIONS GOVERNING ARREST AND CUSTODY PENDING TRIAL

Article 38 of the 1927 Code of Penal Procedure provides as follows:

"Any person arrested on the charge of having committed an offence or crime shall be interrogated by the examining magistrate within twenty-four hours of his arrest.

"A record shall be kept of this and any subsequent interrogations."

In accordance with articles 40 to 44 of the same code, custody pending trial is an exceptional measure

<sup>1</sup> Quotations and summaries transmitted in French by courtesy of the Ministry of Foreign Affairs of the Royal Government of Laos. Translation by the United Nations Secretariat.

<sup>2</sup> These two codes were promulgated by an order of the Governor-General of 5 September 1927 and were published in the *Journal officiel* of the same date, p. 2593.

which must be terminated either automatically by the examining magistrate or at the request of the accused, or by order of the State Counsel's Department, as soon as such detention ceases to be essential to the examining magistrate's inquiry. If the examining magistrate issues an order refusing provisional release, it may be challenged in the Arraignment Chamber (*Chambre des mises en accusation*) which acts as an appeal court.

### RIGHT OF FAIR TRIAL

Prior to 1953, French lawyers admitted to the Indochina Bar acted as counsel for the defence. They were entitled:

1. To have access to the dossiers relating to the case;
2. To assist their clients during interrogations and confrontations;
3. To defend their clients in court;
4. To visit them without hindrance at any time during their detention.

Royal ordinance No. 38 of 23 February 1953 set up a National Corps of Defence Counsel (*Corps national de défenseurs en justice*) for all penal, civil and commercial matters. In penal cases, the rights of such counsel are the same as those of the above-mentioned French lawyers.

### LEGAL RECOGNITION OF OFFENCES AND PENALTIES

Article 3 of the Penal Code provides as follows:

"A judge may not award a penalty for an act not specifically punishable under a provision of the Code."

### INVIOABILITY OF THE HOME

In accordance with article 1 of the decree of 20 October 1924, confirmed by Act 83 of 19 January 1951, the house of any person living within the territory of Laos is an inviolable asylum. No person may enter during the night, except in case of fire or flood or unless so requested by the occupant, or during the day against the wishes of the master of the house, except as provided by law and subject to the formalities therein prescribed. In application of the principle of inviolability of the home, any act constituting a violation of the integrity of the home is punishable under articles 185 to 188 of the Penal Code.

# LEBANON

## NOTE

1. Article 1 of legislative decree No. 4, of 30 November 1954, concerning expropriation reads as follows:

"Art. 1. Property may be expropriated only in the public interest and after just compensation.

"By property is meant a building including the land upon which it is built together with its attached surroundings and gardens, or a plot or adjacent plots of land.

"Art. 2. Public interest is to be decided upon by a decree issued at the request of the Ministry concerned, or municipalities, or villages other than municipalities, or public institutions, or holders of concessions, or other persons who are authorized to do so by law.

"A maximum time limit shall be set in this decree for the completion of the expropriation. In determining the time limit, the importance of the project shall be taken into consideration, provided that the time limit shall not exceed three years from the date of publishing the decree in the official gazette."<sup>1</sup>

Articles 3-80 of the legislative decree set out the procedure and the general conditions under which expropriation may be carried out.

2. An Act of 1 December 1954 amended articles 317, 474 and 475 of the Penal Code, legislative decree No. 340 NI of 1 March 1943, concerning the expression of views hostile or injurious to religious groups, to read as follows:

"Art. 317. Every action, every written publication and every speech whose object or effect is to arouse religious or racial feelings and to provoke conflicts between communities or different parts of the people, shall be punishable with imprisonment varying from one year to three years, and with a fine of from fifty to four hundred pounds.

...

"Art. 474. Whoever, in one of the ways set out in article 209, insults one of the publicly professed religions, or holds up to contempt one of these religions, shall be punished by imprisonment varying from six months to three years.

Art. 475. The following shall be punished by a term of imprisonment varying from six months to three years:

<sup>1</sup> Arabic text in *Official Gazette of the Republic of Lebanon* No. 49, of 1 December 1954, pp. 815-830. Translation by the United Nations Secretariat.

1. Any person disturbing religious worship or ceremonies and practices pertaining thereto, or impeding such worship by deed or threat.

2. Any person destroying, mutilating, defacing, desecrating or defiling buildings dedicated to religious purposes, or images and other objects venerated by members of a religious faith or by a section of the population."<sup>2</sup>

3. An Act of 8 May 1954 added the following new paragraph to article 41 of the Law on the Press, legislative decree No. 4, of 22 October 1952:<sup>3</sup>

"No preventive arrests can be made for crimes committed by means of publication except under conditions provided for in articles 270 to 321 of the Penal Code, and in article 37 of the Law on the Press or in cases involving the person of the Chief of State."<sup>4</sup>

4. Legislative decree No. 5 of 10 December 1954 concerning municipalities<sup>5</sup> provides for the establishment of municipalities, their legal status, organization, competences and electoral procedures.

5. Legislative decree No. 2 of 30 November 1954 organizing the Ministry of Public Planning and defining its competence includes the following provisions:

"Art. 1. The Ministry of Public Planning shall undertake to direct and co-ordinate development projects which aim at developing economic activities, promoting national wealth and national income and raising the standard of living of all citizens in accordance with a general public planning programme, designed to guarantee the utmost use of all the resources of the country.

"The Ministry shall supervise and execute all projects which fall within the public planning programme."<sup>6</sup>

<sup>2</sup> Arabic text in *Official Gazette of the Republic of Lebanon* No. 50 of 8 December 1954, pp. 848-849. Translation by the United Nations Secretariat.

<sup>3</sup> See *Yearbook on Human Rights for 1952*, pp. 173-175.

<sup>4</sup> Arabic text in *Official Gazette of the Republic of Lebanon* No. 20, of 19 May 1954, pp. 310-311. Translation by the United Nations Secretariat.

<sup>5</sup> Arabic text in *Official Gazette of the Republic of Lebanon* No. 51, of 15 December 1954, pp. 871-904.

<sup>6</sup> Arabic text in *Official Gazette of the Republic of Lebanon* No. 49, of 1 December 1954, pp. 802-810. Translation by the United Nations Secretariat.

# LIBERIA

## JUDICIAL DECISION

### RIGHT OF ASSEMBLY—RIGHT OF PETITION—FREEDOM OF EXPRESSION— LIMITATIONS—LIBERIAN LAW ON SEDITION

THORGUES SIE, SR., AND EIGHTEEN OTHERS *v.* THE REPUBLIC OF LIBERIA

*Supreme Court of the Republic of Liberia*

Decided 28 May 1954<sup>1</sup>

*The facts.* The case before the Supreme Court was an appeal against a conviction (and sentence to three years' imprisonment and confiscation of property, real and personal) for sedition, as defined as follows in the Criminal Code of Liberia:

"It is hereby declared seditious for any citizen of Liberia or other person resident within the territory of the Republic who shall stir up rebellion or set on foot, incite or in any way otherwise promote insurrection against the authority of the Government of the Republic, or

"(a) Who shall communicate by speech or in writing to any tribe, Chief of a tribe, or other person any statement imputing to the Government unfairness in the treatment of the Native population if untrue, or in any other class or section of the community with the intent in so doing to cause discontent and political unrest among them; or

"(b) Who shall write or inspire the writing of any document to a foreign Government or any official thereof making representations on any matter properly the subject of domestic enquiry and adjustment; or

"(c) Who shall convene or promote the convening of any meeting, public or private, the object of which shall be to defy, subvert or overthrow the constituted authority of the Government; or

"(d) Who shall write or speak in a disrespectful or defamatory manner of the incumbent of the Presidential Office with intent in so doing to show disrespect to the Head of the State and degrade the Office and thereby bring disintegration into the organization of the Government."

In the words of the Supreme Court, the indictment against the persons convicted had charged them with "having committed the crime of sedition by:

"(1) Convening certain secret meetings, and at said meetings making inflammatory utterances of the following nature:

"A man can have what he is entitled to only through bloodshed, and if the Kroo people or the party wish to succeed, they must stand firm. If they fail, third persons will come in to intervene, which definitely will result in justice in favour of the aborigines, who, from time to time, have been under suppression. That if one tribe of the Kroos can resist the Government for a period of six years, then it is possible that the entire indigenous element definitely can affect the Government. That Twe will be President, and that if he does not be President, there will be no President; that their tickets will be printed and taken to the polls, and if they are not permitted to vote there will be no election, and that the United Nations is back of Twe in his doings. That if they are not successful in getting the majority of votes in May, they would rise up against the authorities and fight a War."

"(2) That they wrote a certain letter to the President of Liberia in which, besides heaping invectives upon the Government of Liberia, they requested the President to order the Probate Court to register their articles of association *nunc pro tunc*, and to postpone the general election, which according to existing laws was then due to be held on the first Tuesday in May of the same year.

"(3) That appellants wrote a letter to the Secretary-General of the United Nations organization, copies of which they sent to the United States and British Governments near the capital, respectively, reporting what they term 'the oppressive and illegal treatment of their party and the aborigines by the Government of Liberia, and craving the intervention of the United Nations and the other two foreign governments named into the political or domestic affairs of the country.'"

In their appeal the persons convicted relied, *inter alia*, upon article 1, section 5, of the Constitution

<sup>1</sup> Summary by the United Nations Secretariat from the opinion of the Supreme Court contained in *Complete Set of Opinions delivered by the Honourable Supreme Court of the Republic of Liberia during its March Term, A.D. 1954, on May 28, A.D. 1954* (mimeographed copy certified as true by the Clerk of the Supreme Court).

of Liberia, according to which: "The people have a right at all times, in an orderly and peaceable manner, to assemble and consult upon the common good, to instruct their representatives, and to petition the Government or any public functionaries for the redress of grievances."<sup>1</sup>

*Held.* That the conviction of all but two of the appellants be upheld. The Supreme Court observed that from the wording of the above-mentioned provision of the Criminal Code, "it can be readily seen that any person, whether citizen or alien residing within the Republic, who shall write or publish to any foreign Government any information, tending to invoke foreign intervention into the domestic affairs of the country; or who shall make inflammatory statements to incite insurrection or rebellion against the authority of the Government, shall be guilty of sedition." The Supreme Court then reviewed the evidence in the case and continued as follows:

"Having reviewed the evidence on both sides, it now becomes our duty to say whether or not from the said evidence the meetings held by appellants were in the class category of meetings contemplated by [article 1] section 5 of our Constitution, for if from the evidence it can be shown that they were orderly and pointed towards peace and respect for constituted authority, then undoubtedly they fall within the constitutional guaranty and in such a case appellants will not have committed any wrong punishable by law.

"A careful study of the evidence reveals that, barring those who have already been shown herein as not having participated, appellants did utter and make use of inflammatory and threatening statements and expressions tending to incite rebellion and insurrection, to create disregard for and overthrow of the Government of Liberia. Because expression of this kind—namely, 'This country when the pioneers came here they did not get things on flower bed of ease, they had to fight and struggle, and if a man is entitled to a thing and he cannot get it, it is only through bloodshed that he can get the thing that is due him.' Further, this threatening expression was proven to have been made by appellants—namely: 'A man is born to die, we are of opinion whether life or death Mr. Twe will be President.'

"It is obvious that appellants' sole objective in making these inflammatory expressions was to incite the people to the extent arousing a spirit of disregard for law and constituted authority, and by means of force and bloodshed place their candidate at the head of the nation even at the cost of human life. Moreover, the statement made by appellant Thorgues Sie in one of the meetings in question, 'that all he wanted was to overthrow Mr. Tubman's Government'—meaning the Government of Liberia—and many more

of these inflammatory expressions made by appellant Thorgues Sie and his co-appellants, to wit: 'Well I tell you what we can do; we can start breaking down these foreign corporations from Firestone down to Monrovia.' These expressions, and many similar ones such as 'If one tribe of the Kroos living so far from the capital could resist the Government for six years, how much more can't the entire indigenous elements affect the Government', could never be the product of an elderly and peaceable assembly such as is contemplated by our Constitution and cited by appellants in their defence. On the contrary, it is crystal clear from the evidence in this case that these meetings of appellants were designed to incite rebellion and insurrection, to cause disunion and disintegration, and were patently calculated to overthrow the Government of Liberia even if a question of foreign control had to enter the equation.

"To show that appellants and all of them (except those already referred to herein as non-participants) were in full agreement with the movements and did all participate therein, the record shows that when Thorgues Sie suggested the breaking down of all the foreign corporations from Firestone to Monrovia, and Mr. Twe interjected that 'This scheme will not work, because of the lack of sufficient arms,' and asked to see who all would stand in the fight with them, all the appellants raised their hands in assent, assurance and applause.

"It is our opinion that the evidence having convincingly shown that the meeting held by appellants tended neither to the promotion of peace and unity in the State nor to the preservation of order as contemplated under section 5, article 1, of our Constitution, the protection which appellants seek to enjoy under this constitutional provision cannot be enjoyed by them. For while it is true that the people have a right to assemble and consult upon the public good; and that all citizens possessing the required legal qualification have a right to organize political parties in the country in harmony with existing laws, and to canvass the names of their candidates, it is to be understood and remembered that in the exercise and enjoyment of these rights it was never intended by the Constitution that men should be allowed an unbridled licence to make utterances, or commit acts capable of inciting the people, disturbing the public peace, and creating disunion and unrest in the country. In support of our view in this respect we quote the following rule from Wharton's Criminal Procedure, Vol. I:

"'Freedom of speech and liberty of the press do not mean an unbridled licence to say and write or publish whatever evil-minded persons may feel inclined, any more than the equally constitutional right of free assembly authorizes and legalizes unlawful assemblies, riots, routs, and the like. Liberty does not mean unrestrained licence. There is a legal obligation on the part of all those who speak and

<sup>1</sup> Extracts from the Constitution of Liberia appear in *Yearbook on Human Rights for 1946*, pp. 183-184.

write and publish to do so in such a manner as not to offend against public decency, public morals, public laws, and not scurrilously vituperatively attack public officers, the administration of justice, the laws of the land, or the government; and failure in these particulars, and offending against any one or all of these things, renders a person subject to indictment and prosecution. And all such offenders, in the due and orderly administration of justice and the criminal laws of the land should be promptly indicted, vigorously prosecuted, and adequately punished, notwithstanding, and in protection of, legitimate free speech and liberty of the press.<sup>2</sup>

"In England the law on the subject as found in Russell on crimes is as follows:

"Sedition consists in acts, words, or writings intended or calculated, in the circumstances of the time, to disturb the tranquillity of the State, by creating ill-will, discontent, disaffection, hatred or contempt towards the person of the King, or towards the Constitution or Parliament, or the Government, or the established institutions of the country, or by exciting ill-will between different classes of the King's subjects, or encouraging any class of them to endeavour to disobey, defy, or subvert the laws or resist any execution, or to create tumults or riots, or to do any act of violence or outrage or endangering the public peace.

"When the offence is committed by means of writing, or print, or pictures, it is termed seditious libel.

"The offence is a misdemeanour indictable at common law.

"As to seditious conspiracy, vide post p. 173.

"In the case of seditious libel, it is doubtful whether at common law the offence is complete when the libel is composed, or whether it must be shown that it was also published.

"Seditious publications are not justified or excused by proof of the truth of the statements made."

"It is our opinion, therefore, that the expressions made by appellants from time to time at their meetings were seditious.

"Defending themselves at this bar against the charge of writing the letters to the President of Liberia and the United Nations and sending copies to the American and British Embassies respectively near this capital, appellants admitted the writing of these letters, but sought to avoid consequence by arguing that they regarded the United Nations as an organization whose office it was to establish peace, and so their letter was sent as an appeal to the United Nations to come in and make peace between their party and the True Whig Party. Such an argument, besides being unmeritorious and untenable, is misleading and untrue, because in the scurrilous and impertinent letter

written to the President of Liberia, appellants, besides castigating the Probate Court, requested the President to commit several unconstitutional acts—namely, that he should postpone the date of the General Election, contrary, of course, to existing laws already fixing the time; that he should order and instruct the Elections Commission to place the names of their candidate on the ballot and that he should order the judge of the Probate Court to admit to probate their articles of association *nunc pro tunc*, which articles of association, according to the records before us, had been withdrawn by their own lawyer who offered them for probate, as appears more fully from copy of withdrawal hereunder quoted:...

"And although appellants knew fully well that their articles of association had been withdrawn by their lawyer, yet in their letter to the United Nations they impute guile to the Probate Court by charging the judge thereof with having refused to admit their said articles of association to probate, and implored the intervention of the United Nations. Is this not clear and convincing proof of making false representation against the Government of Liberia to foreign governments (for the United Nations is composed of several foreign governments) and soliciting their intervention in, and interference with the domestic problem of the country?

"To show how bent appellants were on creating strife, mischief and destruction; how sinister their minds and opaque their mentality, they sent to the United Nations a copy of their letter written to the President of Liberia which was manifestly pregnant with distortion, but failed to send the United Nations a copy of the President's reply to their letter, which if they desired fair play they should have done in order to have afforded the United Nations an opportunity of having an all-round view of the picture and a hearing of both sides of the question. Is this not proof of a vile, wanton and perfidious intention—one designed at overthrowing the Government of Liberia?

"A growing evil of this age which needs to be curbed, and which results either from ignorance or misconception of section 15 of article 1 of our Constitution on the question of free speech and the freedom of the press,<sup>1</sup> is the belief that the protection of the press and of free speech guaranteed under the constitutional provision referred to above affords an unbridled licence to speak, write and publish whatever they desire to,—whether true or not,—whether said expressions or publications ruined individuals and cause government to suffer disintegration and disruption or not. And if asked why, they at once claim constitutional protection. In our opinion the constitutional guarantee of the press and free speech does not give an unbridled licence to write letters of the nature written to the President of Liberia and to the United Nations organization.

<sup>1</sup> See *Tearbook on Human Rights for 1946*, pp. 183-184.

"On the subject of freedom of the press and free speech we have the following reported cases from *Lawyers' Reports Annotated*:

"The constitutional liberty of speech and of the press, as we understand it, implies a right to freely utter and publish whatever the citizen may please, and to be protected against any responsibility for so doing, except so far as such publications, from their blasphemy, obscenity, or scandalous character, may be a public offence, or as by their falsehood and malice they may injuriously affect the standing, reputation, or pecuniary interests of individuals." (Cooley, *Const. Lim.* 7th ed. 603, 604.) This doctrine was recently authoritatively stated by the Supreme Court of North Carolina as follows: "In its broadest sense, freedom of the press includes not only exemption from censorship, but security against laws enacted by the legislative department of the government, or measures resorted to by either of the other branches for the purpose of stifling just criticism or muzzling public opinion." (Cowan v. Fairbrother, 118 N.C. 406, 32 L.R.A. 829, 54 Am. St. Rep. 733, 24 S.E. 212.) Such, also, is the opinion of the Supreme Court of Texas. Whatever more than freedom from previous licence the constitutional guaranty may include, it is clear that it does not grant immunity for the publication of articles which imperil the public peace by advocating the murder of governmental officers and the destruction of organized society. Constitutional government may at least protect its own life, and Johann Most was properly convicted under a statute designed to secure the public peace, because of an article appearing in his newspaper, the *Freiheit*, instigating revolution and murder, suggesting the persons to be murdered through the positions occupied and the duties performed by them, advising all persons to discharge their duty to the human race by murdering those who enforce law, denouncing those who would spare ministers of justice as guilty of a crime against humanity, and naming poison and dynamite as agencies to be employed in murder and destruction. (People v. Most 171 N.Y. 423, 58 L.R.A. 509, 64 N.E. 175.) Constitutional government may also, under its police power, take reasonable steps to protect the morals of the people for whom and by whom it is instituted, and to this end may suppress the circulation of newspapers which, like the Kansas City *Sunday Sun* of infamous memory, are devoted largely to the publication of scandals, lechery, assignations, intrigues of men and women, and other immoral conduct. (Re Banks, 56 Kan. 242, 42 Pac. 693; State v. Van Wye, 136 No. 227, 58 Am. St. Rep. 627, 37 S.W. 938; Strohm v. People, 160 Ill. 582, 43 N.E. 622.) Likewise, newspapers may be suppressed which

are made up principally of criminal news, police reports, and pictures and stories of bloodshed, lust and crime. (State v. McKee, 73 Conn. 18, 49 L.R.A. 542, 84 Am. St. Rep. 124, 46 Atl. 409). Newspapers like those just described display the licentiousness, and not the liberty, of the press. Here, as elsewhere in our political system, just rules and regulations are not badges of oppression, but are the necessary conditions of true liberty, and the constitutional guaranty under discussion is not opposed to penal and remedial laws... (20 L.R.A. (N.S.)).

"In a certain reported case brought by the State of Minnesota against a press company known as the Pioneer Press Company, the following is given on the subject of free speech and liberty of the press:

"The liberty of the press shall for ever remain inviolate, and all persons may freely speak, write and publish their sentiments on all subjects, being responsible for the abuse of such rights." Mr. Cooley traces the history of this provision, and shows that, although it was directly aimed at the removal of previous restraints upon speech and freedom of the press, yet it does not follow that there is a constitutional right to publish every fact or statement which may be true. "We understand liberty of speech and of the press to imply, not only liberty to publish, but complete immunity from legal censure and punishment for publication, so long as it is not harmful in its character, when tested by such standards as the law affords." (Const. Lim. 7th ed. 605.) But he also states: "If the nature of the case is such as to make it improper that the proceedings should be spread before the public, because of their immoral tendency or of the blasphemous or indecent character of the evidence exhibited, the publication, though impartial and full, will be a public offence, and punishable accordingly." Mr. Story states that the constitutional prohibition "places no restraint upon the power of the legislature to punish for the publication of matter which is injurious to society according to the standard of the common law. It does not deprive the state of the primary right of self-preservation." Appellant citing State ex rel Crow v. Shepherd, 177 Mo. 205, 99 Am. St. Rep. 624, 76 S.W. 79, argues that there are no constitutional limitations upon the liberty of the press, unless the subject-matter be blasphemous, obscene, seditious or scandalous in character."

...

"We have no hesitancy in concluding from the contents of the letter written to the United Nations that the said document is seditious according to the provision of our Statutes and other authority cited in this opinion."

# LIBYA

## THE DEVELOPMENT OF HUMAN RIGHTS IN LIBYA IN 1954<sup>1</sup>

### 1. POLITICAL RIGHTS

#### A. *Right to Vote in Elections to the House of Representatives*

Article 3 of the royal ordinance of 16 November 1955 on the implementation of Libya's first electoral law (law No. 5 of 1951)<sup>2</sup> relates to the right of Libyans to vote, and provides as follows:

"Every male Libyan who has completed his twenty-first year (Gregorian) shall be entitled to vote unless he:

"(a) Is insane or mentally defective; or

"(b) Is an undischarged bankrupt and less than four years have elapsed since the date on which he was declared bankrupt; or

"(c) Is serving a term of imprisonment; or

"(d) Is a member of the Libyan Army or the police forces."

#### B. *Right to Qualify for Election to Parliament*

Article 4 of the above-mentioned ordinance contains the following provision concerning a Libyan's right to qualify for election to the House of Representatives;

"Subject to the provisions of articles 5 and 23 of this Ordinance, every male person shall be eligible for election to the House of Representatives provided that:

"(a) He is registered in the electoral rolls;

"(b) He has completed his thirtieth year (Gregorian);

"(c) He has not been sentenced to a term of imprisonment of six months or more, or sentenced in respect of an election offence, unless five years or more have elapsed since the sentence was carried out;

"(d) He is able to read and write Arabic."

#### C. *Access to Public Office*

Article 81 of the Libyan Constitution concerns the right of Libyans to be appointed Minister, as follows:

"No non-Libyan may be a Minister."

<sup>1</sup> Note prepared by the Ministry of Foreign Affairs. English translation from the Arabic by the United Nations Secretariat.

<sup>2</sup> See *Tearbook on Human Rights for 1951*, pp. 229-230.

#### D. *Right to be at the Same Time a Minister and a Member of Parliament*

Under article 83 of the Constitution, a Libyan may at the same time be a Minister and a member of Parliament.

### 2. CIVIL RIGHTS

Libyans enjoy civil rights, unless sentenced to deprivation of such rights as a penalty accessory to a principal penalty specified in the Penal Code. The rule is that Libyans enjoy civil rights; deprivation of civil rights on commission of offences for which penalties accessory to the principal penalty are laid down is only the exception. That principle is stated in articles 33-34 of the Libyan Penal Code.

Article 33 makes the following provisions:

"Deprivation of civil rights may be perpetual or temporary.

"[Perpetual] deprivation shall entail the loss by the offender of the following rights and privileges, save as otherwise provided by law:

"1. The right to stand as a candidate or to vote in elections to any representative body, and all other political rights;

"2. The capacity to remain in any public office or to be accepted for any public service not of a compulsory nature; he shall be deprived of any title attaching to employment in public office or service;

"3. The capacity to act, even provisionally, as guardian or curator, and any other right relating to guardianship or curatorship;

"4. Academic degrees and distinctions, and any other titles, ranks or decorations or other public marks of distinction;

"5. All honorary rights attaching to any public office, service, rank or title or to any of the capacities, dignities and decorations referred to above;

"6. The capacity to assume or to acquire any of the rights, offices, services, titles, ranks, decorations or marks of distinction referred to in the foregoing paragraphs.

"Temporary deprivation shall debar the condemned person, for the period of such deprivation, from acquiring, exercising or enjoying any of the afore-



mentioned rights, services, offices, ranks, titles or distinctions.

"The period of temporary deprivation may not be less than one nor more than five years."

The cases in which deprivation of civil rights is involved are specified in article 34 of the Penal Code, as follows:

"A sentence of imprisonment for life or for a term of ten years or more shall entail perpetual deprivation of civil rights as from the date of the final judgement. A sentence of imprisonment for a term of three years or more shall entail deprivation of civil rights during such term and thereafter for a period of not less than one or more than five years.

"If the offender is declared in the judgement to be an habitual or professional criminal, or to have strong criminal proclivities, he shall be deprived of civil rights in perpetuity."

### 3. CULTURAL RIGHTS

A regulation on general and special schools and institutes for schoolmasters and mistresses, issued on 10 June 1954 (*Official Gazette*, Volume IV, No. 6, of 5 August 1954), makes provisions governing the curriculum of, and conditions of entry to, teacher-training institutions in Libya.

A regulation on university scholarships, issued on 7 May 1954 (*Official Gazette*, Volume IV, No. 5, of 1 July 1954), makes provisions for the granting of scholarships to Libyans attending universities abroad.



# LIECHTENSTEIN

## NOTE<sup>1</sup>

On 1 January 1954 the Act respecting Old Age and Survivors' Insurance<sup>2</sup> of 28 July 1952 went into effect in the territory of the Principality of Liechtenstein, and on that date (i.e., 1 January 1954) transitional

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<sup>1</sup> This note is based on texts and information received through the courtesy of Mr. Joseph Büchel, formerly Secretary of Government, Triesen/Vaduz, government-appointed correspondent of the *Yearbook on Human Rights*.

<sup>2</sup> *Liechtensteinisches Landes-Gesetzblatt* No. 29, of 31 December 1952. See *Yearbook on Human Rights for 1952*, p. 188 and *idem for 1953*, p. 192.

benefits became payable to citizens of Liechtenstein over the age of sixty years. On 29 July 1954, the Government of Liechtenstein issued a regulation for the application of this Act (*Liechtensteinisches Landes-Gesetzblatt* No. 12, of 20 September 1954). In the case of persons insured, pursuant to statute, against the consequences of sickness (wage-earning and salaried employees in industrial and business concerns, domestic servants) the waiting period is waived so far as the compulsory insurance is concerned and the persons in question become eligible for benefits immediately upon entering employment.

# LUXEMBOURG

## NOTE<sup>1</sup>

### I. LEGISLATION

The following laws and regulations concerning human rights were promulgated and published during 1954:

1. Act of 24 April 1954 to amend the Social Insurance Code, which improved the social security legislation in force in the Grand Duchy in many particulars (*Mémorial*, No. 18, p. 327 *et seq.*).
2. Act of 20 December 1954 to amend article 379 of the Penal Code, which made certain minor changes in the penal law relating to the prevention and punishment of the debauching and corruption of young persons (*Mémorial*, No. 62, p. 1507).

Article 379 of the Penal Code is amended as follows:

"Any person who

"(1) Commits an offence against morals by habitually causing, facilitating or encouraging the debauching or corruption of young persons of either sex below the age of twenty-one years in order to gratify the passions of another person;

"(2) In order to gratify the passions of another person procures, entices or leads away any other person, even with the consent of that person, for the purposes of prostitution or other immoral purposes, either in the Territory of the Grand Duchy or in a foreign country;

"(3) By fraud, violence, threats, undue influence or any other form of coercion, detains any other person, even if that person is of full age and even for debts contracted by him, in a disorderly house against his will or forces such person to take up prostitution,

shall be liable to imprisonment for a term of not less than six months or more than three years.

"Any person who attempts to commit any such offence shall be liable to imprisonment for a term of not less than three months or more than two years.

"If in the case referred to in sub-paragraph (2) the victim has been procured, enticed or led away by fraud, violence, threats, undue influence or any other form of coercion, or if he has actually been

forced to take up prostitution or to lead an immoral life, the offender shall be liable to imprisonment for a term of not less than one year or more than five years.

"The foregoing penalties shall be imposed even when the several acts constituting the offence have been committed in different countries."

The main purpose of this amendment was to adapt Luxembourg law to the international conventions on the subject.

### II. INTERNATIONAL AGREEMENTS

During 1954, the following important international instruments relating to human rights were approved by the Grand Duchy of Luxembourg:

- (1) The European Defence Community Treaty and the protocols thereto, signed at Paris on 27 May 1952,

were approved by the Act of 24 April 1954 (*Mémorial*, No. 24, p. 643). The second sentence of article 3 of the Treaty provides as follows:

"It [the Community] shall only take action to the extent necessary for the fulfilment of its task, and in so doing it shall respect essential public liberties and the fundamental rights of individuals."<sup>2</sup>

- (2) The Convention on Social Security between the Grand Duchy of Luxembourg and the United Kingdom of Great Britain and Northern Ireland, signed in London on 13 October 1953,

was approved by the Act of 30 November 1954 (*Mémorial* No. 60, p. 1473 *et seq.*).

- (3) (a) The International Convention for the Suppression of Traffic in Women of Full Age, concluded at Geneva on 11 October 1933;
- (b) The protocol to amend the International Convention for the Suppression of the Traffic in Women and Children concluded at Geneva on 30 September 1921 and the Convention for the Suppression of Traffic in Women of Full Age concluded at Geneva on 11 October 1933, signed at Lake Success, New York, on 12 November 1947;
- (c) The protocol to amend the International Convention for the Suppression of the Circulation of and Traffic in Obscene Publications concluded at Geneva on 12 September 1923, signed at Lake Success, New York, on 12 November 1947;

<sup>1</sup> Note prepared by and received through the courtesy of Mr. Ferdinand Wirtgen, Registrar-General and Director of State Lands, Luxembourg, government-appointed correspondent of the *Tearbook on Human Rights*. Translation by the United Nations Secretariat.

<sup>2</sup> See also *Tearbook on Human Rights for 1952*, p. 413.

- (d) The Protocol to amend the International Agreement for the Suppression of the White Slave Traffic signed at Paris on 18 May 1904 and the International Convention for the Suppression of the White Slave Traffic signed at Paris on 4 May 1910, signed at Lake Success, New York, on 4 May 1949; and
- (e) The Protocol to amend the Agreement for the Suppression of the Circulation of Obscene Publications signed at Paris on 4 May 1910, signed at Lake Success, New York, on 4 May 1949;

The above instruments were approved by the Act of 13 December 1954 (*Mémorial*, No. 62, p. 1494 *et seq.*).

- (4) The European Convention on the equivalence of

diplomas leading to admission to universities, signed at Paris on 11 December 1953, was approved by the Act of 13 December 1954, (*Mémorial*, No. 62, p. 1525 *et seq.*).

The purpose of this convention, signed by governments which are members of the Council of Europe, is to promote a policy of joint action in the cultural and scientific fields by encouraging the free access of the young people of Europe to the intellectual resources of the Member States.

The International Sanitary Regulations (WHO Regulations No. 2), adopted by the World Health Assembly on 25 May 1951, were published in the *Mémorial* (No. 20, pp. 401 *et seq.*) under a grand-ducal order of 30 March 1954.

## MEXICO

### DECREE AMENDING VARIOUS ARTICLES OF THE CIVIL CODE FOR THE FEDERAL DISTRICT AND TERRITORIES<sup>1</sup>

of 31 December 1953

#### TEXT OF THE ARTICLES AS AMENDED

*Art. 163.* The wife is under a duty to live with her husband. The court, after considering the circumstances, may release the wife from this duty if the husband transfers his domicile abroad otherwise than in the service of his country, or if he settles in a locality which is insalubrious or otherwise unsuitable as a residence for the wife.<sup>2</sup>

*Art. 169.* The wife may carry on an occupation or profession, or engage in industry, business or trade, provided that this is not prejudicial to her duty under the preceding article,<sup>3</sup> or detrimental to the family's moral integrity or structure.<sup>2</sup>

*Art. 170.* The husband may object to his wife's engaging in the activities mentioned in the preceding article, provided that he bases his objection on the grounds specified therein. The judge shall decide each case on its merits.<sup>4</sup>

*Art. 171.* The wife may object to the husband's carrying on any occupation prejudicial to the family's moral integrity or structure. The judge shall decide each case on its merits.

<sup>1</sup> Spanish text in *Diario Oficial* No. 7, of 9 January 1954, received through the courtesy of Dr. Francisco Cuevas Cancino, of the Secretariat for External Relations, Mexico City. Translation by the United Nations Secretariat.

<sup>2</sup> Words in italics added in 1953.

<sup>3</sup> Art. 168 reads as follows: "The wife shall be responsible for managing and attending to the household affairs."

<sup>4</sup> Words in italics substituted in 1953 for: "Provided he is entirely responsible for the maintenance of the household, and provided that the grounds for his objection are serious and justified."

*Art. 282.* When the divorce suit is admitted, or earlier in case of urgency, the following provisional arrangements shall be made, but only for the duration of the divorce proceedings:

II. *Removal or separation of the spouses in accordance with title V, chapter III, of the Code of Civil Procedure*<sup>5</sup>

*Art. 372.* A married woman shall have capacity, without the consent of her husband, to acknowledge a child born to her before her marriage; *she shall not, however, have the right to bring the child to live in the matrimonial home except with the express consent of her husband.*<sup>2</sup>

*Art. 426.* If parental authority is exercised simultaneously by the father and the mother, or by the grandfather and the grandmother, or by the adoptive parents, the administrator of the property shall be the male; but he shall consult his wife on all matters and obtain her express consent to the most important acts of administration.

*Art. 489.* The parents are the lawful guardians of their unmarried or widowed children, unless the latter have children capable of acting as guardians. The parents shall decide between them which of the two is to undertake the task.<sup>6</sup>

<sup>5</sup> These provisions of the Code of Civil Procedure, as amended by the decree of 2 January 1954, are published in the same *Diario Oficial* as the decree amending the relevant articles of the Civil Code.

<sup>6</sup> Former text: "The father, or if the father is dead or incapacitated, the mother, is the lawful guardian of any unmarried or widowed children, unless the latter have children capable of acting as guardians."

## ORDER AMENDING VARIOUS ARTICLES OF THE FEDERAL CODE OF CRIMINAL PROCEDURE<sup>1</sup>

### TEXT OF CERTAIN OF THE ARTICLES AS AMENDED

*Art. 2.* Within the period of preliminary inquiry the federal judicial police, in the exercise of its powers, shall:

I. Receive information and complaints laid by any individual or authority concerning acts which may constitute criminal offences under federal law. (In such cases the various police forces, when acting as judicial police, shall notify the State Counsel's Department immediately and shall cease so to act when the latter so directs.)

...

*Art. 3.* Within the same period the Federal State Counsel's Department shall:

I. Itself perform, where necessary, the functions referred to in the previous article, with powers to give directions and instructions to all authorities and police forces in cases in which these are exercising the functions of judicial police in conformity with the law.

...

*Art. 38.* If a criminal offence is fully proven by judicial proceedings, the official dealing with the case shall, upon the application of the person concerned, take the necessary action for the purpose of reinstating him in the enjoyment of his rights, to the extent consistent with statute. Where movables are involved, then, regardless of whether the offence is proven, these may be retained only if in the opinion of the

<sup>1</sup> Spanish text in *Diario Oficial* No. 7, of 9 January 1954, received through the courtesy of Dr. Francisco Cuevas Cancino, of the Secretariat for External Relations, Mexico City. Translation by the United Nations Secretariat.

person conducting the proceedings their retention is necessary to the due completion of the inquiry.

If the delivery of the movables in question might be prejudicial to the rights of a third party or of the accused, the delivery may be effected subject to the deposit of security in an amount sufficient to cover the damage and prejudice, if in the opinion of the official having custody of the property such security is necessary.

*Art. 86.* Hearings shall be public, and the defence of the accused at a hearing may be conducted either by the accused in person or by his counsel.

The State Counsel may enter a replication as often as he sees fit, and a rebuttal may be entered by the defence on each occasion.

If the accused is defended by more than one counsel, not more than one counsel shall speak for the defence on each occasion. The same rule shall apply in cases in which more than one representative of the State Counsel is concerned.

*Art. 87.* Hearings shall be conducted regardless of whether the parties are present; nevertheless, the State Counsel must not fail to attend.

At the trial hearing the attendance of counsel for the defence shall be mandatory; the said counsel shall be under a duty to present oral argument in defence of the accused, without prejudice to such plea as he may wish to submit in writing.

If counsel for the defence should fail to comply with the obligations placed upon him by this rule, the court shall award a disciplinary penalty against him.

## DECISIONS OF THE SUPREME COURT RELATING TO HUMAN RIGHTS<sup>1</sup>

### I. FIRST CHAMBER

#### LARCENY BY A PAUPER

Where an accused who has no previous criminal record commits his first theft, without resorting to fraud or any means of violence, and uses the stolen property for the maintenance of his destitute family, and where it is also shown that he had no means or opportunity of providing for his need by gainful work, the court must recognize the presence of exonerating

circumstances within the meaning of article 341 of the Penal Code of Durango. (*Amparo Directo* No. 5440—53. Calixto Ramos Rocha. 10 November 1954.)

#### PROTECTION OF LABOUR

Article 108 of the Protection of the Person Act (*Ley General de Población*) provides that any recruiting officer, agent or other person who, on his own account or on behalf of another person, removes or attempts to remove any Mexican worker to a foreign country without prior permission from the Ministry of the Interior, shall be punishable by imprisonment for a term of not less than three months nor more than nine years and by a fine not exceeding 10,000 pesos.

<sup>1</sup> Summaries in *Informe rendido a la Suprema Corte de Justicia de la Nación*, Mexico 1954, received through the courtesy of Dr. Francisco Cuevas Cancino, of the Secretariat for External Relations, Mexico City. Translation by the United Nations Secretariat.

This provision applies not only to recruiting agents, but also to any other person who, either on his own account or on behalf of another, removes or attempts to remove any Mexican worker to a foreign country. The term "worker" in this context means any daily, casual or agricultural labourer, or any other person employed in any productive occupation whatsoever, who derives no income or profit otherwise than through hiring his strength or skill for the purpose of the occupation in question. The article does not apply solely to the persons to whom the labour legislation applies and who are expressly referred to in article 3 of the Federal Employment Act. Consequently it is not necessary that a contract, as prescribed under article 17 of the Employment Act, should have been entered into through the recruiting agent or other person referred to in the said article 108. It follows, therefore, that the term "worker" should be construed broadly, not restrictively. (*Amparo Directo* No. 1982—53—2 a. Evaristo Rodríguez Peña. 4 October 1954.)

## II. SECOND CHAMBER

### RIGHT TO EXERCISE A PROFESSION

Articles 15 and 18 of the Professional Practitioners Act (*Ley de Profesiones*) violate the guarantees set forth in articles 1 and 4 of the Constitution,<sup>1</sup> in so far as they restrict the right of an alien to practise a profession even though he possesses a qualification lawfully obtained in Mexico or duly recognized by the competent authorities; the freedoms guaranteed by our Constitution extend to all inhabitants, without distinction of nationality, and cannot be restricted even by virtue of regulations relating to the nationality and juridical status of aliens (the power to make such regulations being vested in the Congress of the Union pursuant to article 73 (XVI) of the Constitution); discrimination in any form whatsoever is repugnant to the principle of complete freedom of work, guaranteed by article 4. (Cases: 2550—952—2 a. 8310—945—2 a. 1297—953—1 a. 3112—951—2 a. 2232—953—2 a.)

### RIGHT OF PROPERTY

1. Articles 6, 7 and 9 of chapter 45(7) of the regulation concerning urban services in the Federal

<sup>1</sup> These articles read as follows:

"Art. 1. Every person in the United Mexican States shall enjoy the guarantees that this constitution grants, which may neither be restricted nor suspended, except in the cases and under the conditions herein established.

"Art. 4. No person may be prevented from engaging in the profession, industry, commerce, or labour which suits him, provided it is lawful. The exercise of this liberty may be suspended only by judicial action, when the rights of third parties are attacked, or by governmental order issued in the terms that the law indicates when the rights of society are infringed. No one may be deprived of the product of his labour except by judicial determination.

"The law shall determine in each State which are the professions that require a licence for their practice, the conditions that must be fulfilled to obtain it, and the authorities to issue it."

District, and the decree of 13 April 1945 superseding chapter 16(1) of that regulation, provide that in the case of buildings intended for gatherings of more than a thousand persons the owner of the site is under a duty to set aside a specified area on the site for the parking of vehicles; where that is not possible, the Administration of the Federal District may authorize parking on a different site, or require the owner of the building to pay a contribution towards collective car parks, to be built by the Administration itself. These provisions violate neither the rights set forth in article 830 of the Civil Code nor the guarantees contained in article 27 of the Constitution (this article 27 provides that the nation shall at all times have the right to impose on private property the measures that the public interest dictates). We accept the opinion, expressed in the appendix to volume XCVII, p. 1548, of the *Semanario Judicial de la Federación* (Weekly Judicial Review of the Federation) that "the two essential features of a public policy measure are the generality and permanence of the order imposing the measure and the substantial derogation from the right of ownership, as currently understood"; this means, firstly, that "the order must relate to the right of property in general, without particularizing; in other words, it must introduce a permanent and general modification in the whole system of ownership", and, secondly, that "the measure imposed must imply a limitation or transformation of the right of property". In the case of the provisions the validity of which is challenged the two essential features of a public policy measure affecting ownership are not present, for the duty to set aside a specified area for the parking of vehicles does not restrict the owner's rights, especially as he may be released from the duty upon payment of a specified sum. (*Amparo en Revisión* 227—52; Ciudad de los Deportes, S.A. (Sports City Ltd.), 3 March 1954.)

2. The decree of 29 December 1951 purports to vest in the Nation the title to property seized pursuant to the Acts of 11 July 1942 and 24 February 1944; this decree is unconstitutional, as it violates the guarantees contained in articles 1, 14, 16 and 22 of the Constitution.<sup>2</sup> Even though conclusion XIX of the Inter-American Conference on Problems of War and Peace, held at Mexico City from 21 February to 8 March 1945, provided that rights in sequestered property would remain *in statu quo* until the American governments decided on the final disposal of such property, it must nevertheless be understood that upon the restoration of normal constitutional order the Government of the republic is under a duty to respect the guarantees of individual rights. In the present case, the property in question retained its *status quo* as property under sequestration and its status was not that of property the title to which had (as was alleged) been taken away from the plaintiff. (Adolfo Peters. Case 323—54. 16 August 1954. This ruling

<sup>2</sup> These articles are reproduced in the *Yearbook on Human Rights for 1946*, pp. 191—192.

follows and develops the decisions in cases 4448—52—2 *a.*; 190—53—2 *a.* and 2346—53—2 *a.*)

### III. THIRD CHAMBER

#### RIGHT OF PETITION

Article 23 of the Act which regulates the practice of professions in Michoacán provides that any written document which contains an application to the judicial authority must be endorsed with the signature of a lawyer duly authorized by the Professional Council; this provision, on which the judicial authority relied in dismissing an application presented by the plaintiff, virtually stultifies the right of petition guaranteed by article 8 of the Constitution. It destroys the universally recognized principle of procedure to the effect that any person who is *sui juris* may appear before the court in person and renders nugatory the guarantee contained in article 17 of the Constitution, which gives individuals the right to demand that the courts administer justice at the times and under the conditions prescribed by law. For all these reasons, both the Act the validity of which is being challenged and

its enforcement by the judicial authority are repugnant to the above-cited constitutional provisions. (*Revisión* 5136—53. Rafael Aguirre Heredia. 30 April 1954.)

#### MAINTENANCE OF A SPOUSE

Maintenance obligations can never be extinguished by lapse of time, as time does not run as between husband and wife.

The duty to pay maintenance in accordance with a judicially approved agreement cannot be extinguished by lapse of time; this follows from article 108 of the Civil Code of Veracruz, which provides that, while the marriage subsists, either spouse may enforce any right or action against the other spouse and that, so long as the marriage remains in being, time does not begin to run as between them. Article 1200 of the [Federal] Civil Code similarly states that the period of limitation shall neither begin nor run as between husband and wife. (*Directo* 2867—52. Manuel Bandelis. 6 May 1954.)

# MONACO

## NOTE<sup>1</sup>

### I. LEGISLATION

#### A. CIVIL AND POLITICAL RIGHTS

1. Nationality Act, No. 582, of 28 December 1953 (*Journal de Monaco* No. 5023, of 11 January 1954)

This Act amends and supplements the Act of 18 November 1952, which is discussed in the *Tearbook on Human Rights for 1952*.<sup>2</sup>

The Act of 18 November 1952 had granted the right to opt for Monegasque nationality to (1) any person born in Monaco, if one of his parents was of Monegasque origin; (2) any person born in Monaco, if one of his parents and one grandparent of the same line had themselves been born in the principality.

In the Act of 28 December 1953, the wording of the second option is replaced by the following: any person born in Monaco "of a parent who is a Monegasque national or was born in the principality, if one of the ascendants of the latter in the second degree and in the same line is himself a Monegasque national or was himself born in the principality.

The 1953 Act reserves to the Prince the right to enter an objection to the acquisition of Monegasque nationality by option, this right to be exercised (if at all) within six months from the date of the option. The decision to enter an objection requires the concurrence of the Council of State; the person concerned is entitled to appear before the Council.

2. Act No. 585, of 28 December 1953, concerning expropriation for purposes declared to be in the public interest (*Journal de Monaco* No. 5023, of 11 January 1954)

This Act amends article 27 of the principal Act governing expropriation dated 6 April 1949; the 1949 Act lays down the constitutional principle of the inviolability of property, the only permissible exception to this principle being expropriation in cases in which (1) expropriation has been declared to be in the public interest; and (2) compensation has first been paid.

The article in question has now been amended to read:

"If any land or building which has been acquired

<sup>1</sup> Note prepared by Dr. Louis Aureglia, National Counsellor at Monte Carlo, government-appointed correspondent of the *Tearbook on Human Rights*. Translation by the United Nations Secretariat.

<sup>2</sup> Pp. 192-193.

for purposes declared to be in the public interest should not be used for the said purposes within a period of fifteen years from the date of the expropriation order, or from the date of the transfer arranged by private agreement in consequence of such declaration, the Administration shall be under a duty, on being applied to, to restore the land or building in question to the former owner thereof or to his successors in interest."

#### B. ECONOMIC AND SOCIAL RIGHTS

1. Act No. 589, of 21 June 1954, concerning the eligibility of Monegasque women for the practice of the legal profession as barristers (*Journal de Monaco* No. 5048, of 5 July 1954)

Under this Act, Monegasque women who are graduates in law may now be admitted to appear as counsel before the Court of Appeal.

This Act indicates the trend of Monegasque legislation towards equality of rights for men and women. An earlier Act, of 1945, has extended the franchise and eligibility for membership in the Communal Council to Monegasque women.<sup>3</sup>

2. Family Allowances Act, No. 595, of 15 July 1954 (*Journal de Monaco* No. 5051, of 26 July 1954)

This Act provides that wage-earners in certain specified categories and wage-groups are entitled to (1) children's allowances; (2) pre-natal maternity allowances.

### II. DIPLOMATIC INSTRUMENTS

1. Sovereign ordinance No. 901, of 18 February 1954 (*Journal de Monaco* No. 5030, of 1 March 1954),

gives effect in the principality to the protocol bringing under international control drugs outside the scope of the Convention of 13 July 1931 for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, as amended by the Protocol signed at Lake Success on 11 December 1946.

2. Sovereign ordinance No. 937, of 17 March 1954 (*Journal de Monaco* No. 5034, of 29 March 1954),

gives effect to the Convention relating to Social Security concluded at Paris on 28 February 1952 between the plenipotentiaries of France and Monaco.

Under this convention, the social security legisla-

<sup>3</sup> See the *Tearbook on Human Rights for 1948*, p. 356.



tion relating to the organization of social services; to payment of maternity costs; to life, sickness, invalidity and old-age insurance; to family allowances; to compensation for industrial accidents; and to special social service and retirement schemes, made applicable in each contracting State, subject to certain conditions, to the nationals of the other State.

3. Sovereign ordinance No. 1066, of 14 December 1954 (*Journal de Monaco* No. 5073, of 26 December 1954),

gives effect to a further Franco-Monegasque Convention, dated 5 November 1954, which contains more particular regulations governing the application of the aforesaid Convention of 28 February 1952.

4. Sovereign ordinance No. 997, of 2 August 1954 (*Journal de Monaco* No. 5054, of 16 August 1954),

gives effect to the International Agreement on the Importation of Educational, Scientific and Cultural Materials, adopted at Florence in July 1950 by the General Conference of UNESCO.<sup>1</sup>

The Principality of Monaco has been a member of UNESCO since 1948.

5. Sovereign ordinance No. 1065, of 14 December 1954 (*Journal de Monaco* No. 5073, of 27 December 1954),

gives effect to the protocol amending the International Slavery Convention signed at Geneva on 25 September 1926. The protocol transfers to the United Nations the duties and functions formerly vested in the League of Nations under the 1926 Convention.<sup>2</sup>

<sup>1</sup> See *Tearbook on Human Rights for 1950*, pp. 411-415.

<sup>2</sup> See *Tearbook on Human Rights for 1953*, pp. 345-346.

## NEPAL

### INTERIM GOVERNMENT OF NEPAL (THIRD AMENDMENT) ACT, 1954

#### NOTE

The Interim Government of Nepal Act, 1951, extracts from which appear on pp. 197-198 of the *Yearbook on Human Rights for 1953*, was amended in 1954 by the Interim Government of Nepal (Third Amendment) Act.<sup>1</sup> According to its section 1 (1), the amending Act was to be deemed to have come into force on the day when the principal Act came into force. The amendments made in 1954 affected sections quoted in the *Yearbook on Human Rights for 1953* in the following three respects, each relating to part II (Directive Principles of State Policy) of the Act:

(i) For section 2 of the principal Act was substituted the following:

"2. (1) The provisions of this part shall not be enforceable by any court in Nepal; and no Nepal law, whether enacted before or after the commencement of this Act, and no rule or order made under any such law, shall be deemed to be invalid by reason only that it is inconsistent with the provisions of this part.

"(2) Subject to the provision of sub-section (1) the principles laid down in the provisions of this part shall be treated by the Government as being fun-

damental in the governance of the country, and it shall be the duty of the Government to apply the said principles in adapting the existing Nepal laws as early as possible, as well as in framing laws hereafter."

(ii) The word "Government" was substituted for the word "State" in sections 3-17 and 19.

(iii) Section 16 was replaced by the following:

"16. Fundamental principles of law:—

"(i) No tax shall be levied or collected except under the authority of law.

"(ii) Subject to the laws for the time being in force, all citizens shall have the right

- (a) To freedom of speech and expression;
- (b) To assemble peaceably and without arms;
- (c) To form associations and unions;
- (d) To move freely throughout the territory of Nepal;
- (e) To reside and settle in any part of Nepal;
- (f) To acquire, hold, and dispose of property;
- (g) To practise any profession or to carry on any occupation, trade or business."

<sup>1</sup> Promulgated on 20 January 1954 and published in the *Nepal Gazette*.

# NETHERLANDS

## CHARTER FOR THE KINGDOM OF THE NETHERLANDS

(Entered into force 29 December 1954)<sup>1</sup>

*Introductory Note.* By virtue of interim orders which came into force for Surinam on 20 January 1950 and for the Netherlands Antilles on 7 February 1951, those territories obtained autonomy as regards the management of their domestic affairs, including the promotion of their economic, social and cultural interests. These interim orders were superseded by the Charter for the Kingdom of the Netherlands. This charter was adopted by the Second Chamber of the Netherlands Parliament at The Hague on 16 July 1954, by the Parliament of the Netherlands Antilles at Willemstad in Curaçao on 26 August 1954, by the Parliament of Surinam at Paramaribo on 9 September 1954, and by the First Chamber of the Netherlands Parliament at The Hague on 27 October 1954. It was confirmed by Her Majesty the Queen of the Netherlands on 15 December 1954 and promulgated at The Hague, Willemstad and Paramaribo on 29 December, on which date it came into force. The relationship between the Netherlands and Surinam and the Netherlands Antilles, formerly that of a metropolitan country and its colonies, was decisively modified by the establishment of the Charter. Formerly, the Netherlands Constitution provided the constitutional basis for that relationship; it was now embodied in the Charter, which was of a higher order and which was voluntarily agreed upon by the three countries constituting the Kingdom of the Netherlands. Under the Charter, the Kingdom of the Netherlands has assumed a new form; the status of each of the constitutive countries within the kingdom is outlined. The Charter was based on the desire of Surinam and the Netherlands Antilles not for independence but for maintenance of the relationship with the Crown and with the Netherlands. The administration of the internal affairs and interests of Surinam and the Netherlands Antilles is set forth in the respective country Constitutions, which were formerly determined by Netherlands law. Since the Charter became effective, the countries themselves have the right to determine their Constitutions. This includes the right to revise or amend them, subject only to the condition that they not impair the interests of the kingdom as a whole.

### PREAMBLE

The Netherlands, Surinam and the Netherlands Antilles,

Considering that they have expressed freely their will to establish a new constitutional order in the Kingdom of the Netherlands,

In which they will conduct their internal interests autonomously and their common interests on a basis of equality, and

In which they will accord each other reciprocal assistance,

HAVE RESOLVED by mutual consent to establish the Charter for the kingdom as follows.

### 1. GENERAL PROVISIONS

Art. 2. 1. The King reigns over the kingdom and over each of the countries. He is inviolable. The Ministers are responsible.

<sup>1</sup> The Dutch text of the Charter is to be found in *Staatsblad* No. 596, of 1954. The English translation, extracts from which are here published, was kindly furnished by the Permanent Mission of the Netherlands to the United Nations. The introductory note was based upon information also received from the Government of the Netherlands.

...

Art. 3. 1. Without prejudice to whatever is set forth elsewhere in the Charter, kingdom affairs shall include:

...

(c) Netherlands nationality;

...

(f) Supervision of the general provisions governing the admission and expulsion of Netherlands nationals;

(g) The general conditions for admission and expulsion of aliens;

(b) Extradition.

2. Other matters may be declared to be kingdom affairs by mutual consent.

Article 55 shall be equally applicable thereto.

Art. 4. 1. The royal power in kingdom affairs shall be exercised by the King as head of the kingdom.

2. The legislative power in kingdom affairs shall be exercised by the legislative bodies of the kingdom...

Art. 5. 1. The monarchy and the succession to the throne, the organs of the kingdom referred to in

the Charter, and the legislative power in kingdom affairs shall be governed, in so far as not provided by the Charter, by the Constitution of the kingdom.<sup>1</sup>

2. The provisions of the Charter shall prevail in the event of any inconsistency with the Constitution.

...

## 2. THE CONDUCT OF KINGDOM AFFAIRS

*Art. 6.* 1. Kingdom affairs shall be conducted in co-operation by the Netherlands, Surinam and the Netherlands Antilles in accordance with the following provisions.

2. Wherever possible the organs of the countries shall participate in the conduct of these affairs.

...

*Art. 33.* 1. For purposes of defence the requisitioning of ownership and use of property, the restriction of rights of ownership and use, the requisitioning of services and billeting shall not be effected other than pursuant to general legislation to be enacted in kingdom statute, which shall also contain provisions concerning compensation.

2. Whenever possible the said kingdom statute shall entrust the authorities of the countries with the issuance of implementing provisions.

*Art. 34.* 1. For purposes of maintaining external or internal security the King may declare any part of the territory to be in a state of war or in a state of siege in the event of war or danger of war, or if a threat to or disturbance of internal peace and order may substantially affect the interests of the kingdom.

2. The manner in which such a declaration shall be made and its consequences determined shall be provided for by or pursuant to kingdom statute.

3. This legislation may determine that, and in what manner, the powers of civil authorities in respect of public order and the police shall be transferred wholly or partly to other civil or military authorities and that in the latter case the civil authorities shall be subordinate to the military authorities in this respect. Whenever possible, the government of the country concerned shall be consulted with regard to the transfer of powers. This legislation may deviate from provisions relating to the freedom of the press, the right of association and assembly, as well as from those relating to the inviolability of domicile and correspondence.

4. In an area where in the event of war the state of siege has been declared, military penal law and military penal procedure may be applied wholly or partly to any person, in the manner determined by kingdom statute.

...

<sup>1</sup> Concerning the Constitution of the kingdom, see *Yearbook on Human Rights for 1948*, pp. 147-151 and *Yearbook on Human Rights for 1953*, p. 199.

## 4. THE CONSTITUTIONAL ORGANIZATION OF THE COUNTRIES

*Art. 41.* 1. The Netherlands, Surinam and the Netherlands Antilles conduct their internal affairs autonomously.

2. The interests of the kingdom are a matter of common concern to the countries.

*Art. 42.* 1. Within the kingdom, the constitutional organization of the Netherlands is set forth in the Constitution, and those of Surinam and of the Netherlands Antilles in the country constitutions of Surinam and the Netherlands Antilles, which may be referred to as state constitutions.

2. The country constitutions of Surinam and the Netherlands Antilles are enacted in country statutes. Any proposal for the amendment of the country constitutions shall explicitly describe the proposed amendment. The representative bodies shall not adopt the draft of such a country statute except by two-thirds majority of the votes cast.

*Art. 43.* 1. Each of the countries shall promote the observance of fundamental human rights and freedoms, the rule of law and the integrity of administration.

2. The safeguarding of these rights and freedoms, the rules of law and the integrity of administration shall be a kingdom affair.

*Art. 44.* 1. Any country statute for the amendment of the country constitution with regard to

- (a) Articles relating to fundamental human rights and freedoms;
- (b) Provisions relating to the powers of the governor;
- (c) Articles relating to the powers of the representative bodies of the countries;
- (d) Articles relating to the administration of justice as it is understood at present by the country constitutions,

shall be submitted to the Government of the kingdom. Such country statute shall not enter into effect until the Government of the kingdom has signified its concurrence.

2. The provision of the first paragraph shall be applicable also to any country statute for the amendment of the country constitution of the Netherlands Antilles, with regard to the allocation of the seats of the representative body of the Netherlands Antilles to the various island areas, as well as with regard to the provisions concerning the island areas.

3. Draft country statutes referred to in the preceding paragraphs shall not be submitted to the representative body nor be examined by this body if it has initiated such a draft, until the opinion of the Government of the kingdom has been obtained.

Art. 45. Amendments to the Constitution with regard to

- (a) Articles relating to fundamental human rights and freedoms;
- (b) Provisions relating to the authority and the powers of the King;
- (c) Articles relating to the powers of the representative body;
- (d) Articles relating to the administration of justice as it is understood at present in the Constitution,

shall be deemed—without prejudice to the provisions of article 5—to affect Surinam and the Netherlands Antilles, within the meaning of article 10.<sup>1</sup>

Art. 46. The representative bodies shall be elected by Netherlands nationals, residents of the country concerned, who have attained the age to be determined by the countries, which should not exceed the age of twenty-five years. Each voter shall have only one vote. The elections shall be free and secret. In case

<sup>1</sup> Article 10 provides:

"1. The Minister Plenipotentiary [appointed by the government of Surinam or that of the Netherlands Antilles] shall participate in the deliberations of the Council of Ministers [of the Kingdom], and of the permanent Boards and special committees of the Council whenever kingdom affairs are discussed which affect the country in question.

"2. The Governments of Surinam and the Netherlands Antilles can—if in their opinion a particular matter gives rise thereto—appoint, in addition to the Minister Plenipotentiary, a Minister to participate with advisory vote in the deliberations referred to in the preceding paragraph."

of necessity the countries may impose restrictions. Any Netherlands national shall be eligible, subject to requirements of residence and age, as the countries may define.

...

## 5. TRANSITIONAL AND FINAL PROVISIONS

...

Art. 55. 1. Amendments to this Charter shall be enacted by kingdom statute.

2. A proposal for amendment, passed by the States-General, shall not be approved by the King prior to its acceptance by Surinam and the Netherlands Antilles. The acceptance shall be enacted by country statute.

...

3. If and so far as a proposal for amendment of the present charter is at variance with the Constitution, the proposal shall be dealt with in the manner provided for proposals for amendment of the Constitution, provided that the new Chambers may adopt the proposed amendment by an absolute majority of the votes cast.

Art. 56. 1. Authorities, binding laws, ordinances and decrees, existing at the effective date of the Charter, shall remain in effect until they have been replaced by others pursuant to this charter. In so far as the Charter provides otherwise with respect to any matter, the terms of the Charter shall prevail.

...

## ECONOMIC, SOCIAL AND CULTURAL RIGHTS<sup>1</sup>

### WORKERS' PROTECTION

1. An Act of 6 August 1954 (*Statutebook* No. 388) provides for a further modification of the Labour Act 1919. The existing prohibition for children under the age of fourteen to render paid services is extended to fourteen-year-old girls, in so far as work in factories is concerned.

2. A royal decree of 11 August 1954 (*Statutebook* No. 391) (decree on working hours in warehouses) completes the statutory regulation of working hours and periods of rest for the staff of warehouses, which up to 11 August 1954 applied only to warehouses annexed to factories or docks.

### RECONSTRUCTION AND HOUSING

The Reconstruction Act,<sup>2</sup> which was to be discontinued on 1 January 1955, will remain in force until 1 January 1957.

The building premium and subsidy decree for housing, based on this Act, has been modified by

<sup>1</sup> Note received through the courtesy of Dr. A. A. van Rhijn, Secretary of State for Social Affairs, government-appointed correspondent of the *Tearbook on Human Rights*.

<sup>2</sup> See *Tearbook on Human Rights for 1953*, p. 199.

decree of 5 June 1954 to the effect that under certain conditions the State may grant subsidies to private corporations for the building of houses and homes for the aged. These conditions were regulated in the building premium and subsidy regulations for housing, of which mention was already made in the *Tearbook on Human Rights for 1953*.<sup>2</sup>

By modifying the housing decree and the decree on contributions to building, both based on the Housing Act, in a similar way it was made possible for the State to grant financial aid to building associations or municipalities for the building of houses and homes for the aged.

Finally a regulation has been made both under the latter decree and under the building premium and subsidy regulations for housing in order to provide for the granting of financial aid for the building of houses to replace slums.

### EDUCATION, ARTS AND SCIENCE

With regard to the right to receive a *university education*, the main event in 1954 was the quadrupling

of the amount made available in the national budget for the granting of scholarships and loans free of interest.

Apart from direct aid, the communal provisions for the benefit of undergraduates have also been extended. Thus, by means of a subsidy, facilities have been afforded for undergraduates to have a complete dinner at a relatively low price. Furthermore, the advisory committee on the provisions to be made for the benefit of undergraduates (called the Rutten Committee) is now studying how far the existing provisions observed by most universities and colleges in the field of health care and sports should be extended and whether further provisions should be made for the housing of undergraduates.

The bureaux established for the benefit of undergraduates, which under different names have been attached to various universities and colleges, increasingly appear to meet an existing need. Another amount was earmarked as an allowance for maintenance in the period during which scientific research work is done for the preparation of a thesis. The number of grants made available by the Netherlands Organisation for Scientific Research for the benefit of those who are exceptionally gifted scientifically, in order to enable them to devote themselves for a year exclusively to the pursuit of science, has been increased. The average amount of the grants was increased, in connexion with the general increase in salaries.

In the field of *elementary education*, the following measures taken in 1954 are worth mentioning:

#### 1. *School Fee Act*

On 12 December 1953, a bill was submitted to the Second Chamber of the States-General providing for the regulation of school fees. This bill in the first place aims at the abolition of school fees for children of compulsory school age. Generally speaking, the duration of compulsory school attendance in the Netherlands is eight years. In view of this, a system has been chosen in this bill providing for an exemption from school fees for the pupils of eight consecutive school years. Consequently, no school fees are to be paid for pupils of ordinary elementary schools, for pupils of the first two school years of expanded elementary technical education and for pupils of the first year of elementary agricultural and horticultural schools. In the second place the bill makes provision for a considerable reduction of the school fees for pupils of continued elementary schools, grammar schools and secondary schools as well as for the pupils of elementary technical education, training colleges for teachers and expanded elementary and secondary technical education.

Lastly, the proposal implies a marked simplification in the multifarious regulations which are now in force with regard to the school fees for the various branches of education. The bill was passed by the Second

Chamber of the States-General on 20 December 1954.<sup>1</sup>

The regulation of fees proposed will apply retroactively from 1 September, 1953.

#### 2. *Regulation of Education in the Frisian Language and the Use of that Language or of a District Language as the Working Language in Elementary Schools*

A bill having this title was submitted to the Second Chamber of the States-General on 17 November 1953.

In the province of Friesland, in the northern part of the Netherlands, a language is spoken which differs considerably from the Netherlands language and which stands in an exceptional position with regard to the aggregate of dialects spoken in the Netherlands. Experience has shown that most children, in the areas where the Frisian language is spoken, can speak only Frisian when going for the first time to elementary school. It is only very haltingly that they can express themselves in the Netherlands language. For reasons of a pedagogic and didactic nature, it is therefore desirable that during the first years in the elementary school in Friesland the Frisian language should be used as the working language. This is provided for in the above-mentioned bill. As an actual contribution to the preservation of the Frisian culture, and the Frisian language in particular, the bill also provides for the possibility of teaching the Frisian language as a separate subject. It is true that, as is reflected in its title, the bill will apply to all district languages, but in view of the above-mentioned position of the other district languages, it is not to be expected that further provisions will be required with regard to them. The bill was passed by the Second Chamber of the States-General in the second half of 1954.<sup>2</sup>

#### ECONOMIC AFFAIRS

1. An Act of 25 February 1954 (*Statutebook* No. 99) (Act on the Establishment of Trades), which is to replace the Act on the Establishment of Small-scale Trades, 1937 (*Statutebook* No. 619) and the decree on the prohibition of the establishment of small-scale trades, 1941 (*Government Gazette* No. 234), is aimed at raising the level of industrial management and counteracting the making of unjustified establishments. Consequently, the question whether there is a need for certain establishments has not been taken into account.

The main provisions of the Act are to the effect that at the request of organized industry it may be prohibited by Order in Council (decree on the establishment of trades) to carry on a certain trade without the permission of the Chamber of Commerce and Factories.

<sup>1</sup> The bill was approved by the First Chamber of the States-General on 17 May 1955 and entered into force on 20 May 1955 (*Statutebook* No. 223).

<sup>2</sup> The First Chamber of the States-General passed the bill on 17 May 1955, and it entered into force on 20 May 1955 (*Statutebook* No. 225).

Such a permit is granted only if the requirements under the decree on the establishment of trades have been complied with. These requirements may bear only on solvency, commercial knowledge and skill.

Unlike the Act of 1937, which only applied to retail trade, handicrafts and small-scale industries, the scope of operation of the new act is unlimited in principle. The only exceptions are made with regard to agriculture, fisheries, banking, insurance companies and transport undertakings, in view of the fact that these branches of industry are so specialized that they cannot be fitted within the framework of this general regulation.<sup>1</sup>

2. An Act of 7 July 1954 (*Statutebook* No. 399) (Act on licenses for the Establishment of Industrial Undertakings, 1954), which is to replace the Act on the Licences for the Establishment of Industrial Undertakings, 1938 (*Statutebook* No. 519) and the decree on the establishment of industrial undertakings, 1941 (Government Gazette No. 608), unlike the Act mentioned above, takes into account whether there is a need for certain establishments. Under this act it may be prohibited by Order in Council (decree on licenses for the establishment of industrial undertakings) to carry on an industrial undertaking specified in the decree without the permission of the Minister of Economic Affairs.

Such a decree on licenses to establish an industrial undertaking can be based only on three possible grounds—namely, over-capacity, need for further industrialization, and international law obligations with regard to the co-ordination of investments.

Furthermore, it has been laid down in the Act that, in the case of over-capacity, the request to close down a certain industrial undertaking should be made by the branch of industry concerned; in the two other cases the Government itself is authorized to take the initiative for such a closing-down.

As regards the scope of activities of the Minister for Industrial Organization, it may be observed that

the Act on Industrial Organization (*Statutebook* 1950, K 22) was applied in 1954 in many cases, especially through the establishment of several commodity boards and industrial boards in the field of food supply and of an industrial board for the coal-mining industry (Mining Statute, 1954). In all these cases the Government has proceeded to establish the boards after the Social and Economic Council had given advice, of their own accord and in accordance with what they regarded as a sufficiently representative representation of the organizations of the employers and workers concerned.

The Government has explicitly stated that it greatly prefers this procedure, which aims at ensuring the greatest possible influence to the organizations of employers and workers concerned in the establishment of industrial bodies, to the other procedure provided for under article 69 of the Act on Industrial Organization—namely, that the Government itself should take the initiative for the establishment of industrial bodies.

The acts on the establishment of commodity boards and the decrees on the establishment of industrial boards—with the exception of the industrial board for the coal-mining industry, which was established by Act—give an exhaustive enumeration of the subjects which have been left for regulation or further regulation to the commodity or industrial boards. Consequently, their competence to make autonomous decrees, on contravention of which a penal sanction will be imposed, is limited to these subjects.

Apart from that, the industrial bodies are authorized to make regulations by virtue of their co-management.

#### OVERSEAS PARTS OF THE KINGDOM

The introduction into the Netherlands Antilles in 1954 of the forty-five- and forty-eight-hour working week and furthermore the prohibition placed in the same year on working at night and on female and juvenile workers' performing dangerous activities are worth mentioning.

<sup>1</sup> The Act entered into force on 1 July 1955.

# NEW ZEALAND

## NOTE<sup>1</sup>

### I. LEGISLATION

#### *Child Welfare Amendment Act 1954, No. 18*

Amends the principal act by including an additional provision providing that the magistrate or justice may exercise jurisdiction for the purpose of doing all necessary acts preliminary to a hearing, including the adjournment of the hearing, remanding the defendant, or releasing him on bail.

#### *Child Welfare Amendment Act (No. 2) 1954, No. 77*

Amends the principal act by providing that, where information is laid against a child in respect of an offence, a parent or guardian may be required to appear before a children's court with the child and be examined in respect of the upbringing and control of the child.

#### *Criminal Justice Act 1954, No. 50*

Consolidates and amends the law relating to probation for offenders and borstal detention, reforms existing methods and provides new methods for dealing with offenders liable to imprisonment and amends the law relating to criminal proceedings. The main provisions of this Act are as follows:

##### 1. Probation

A revision and a strengthening of the former provisions relating to probation. Alters the term of probation allowed from a maximum of five years to a minimum of one year and a maximum of three; sets out certain conditions applicable to every release on probation; gives the court power to impose additional conditions and provides for the extension by the court of a shorter term up to the maximum of three years or the discharge of a probationer before the expiry of the term. It also gives the court power in all cases to impose any fine authorized by law in addition to placing an offender on probation.

##### 2. Young offenders

Imposes restrictions on imprisonment or detention of persons under twenty-one years of age and provides that where a court remands, or commits for trial or for sentence, a person under twenty-one it shall release him on bail or otherwise subject to such conditions as it thinks fit, or if he is under seventeen may remand him in the custody of the Superintendent of the

Child Welfare Division of the Department of Education.

Introduces the sentence of detention in a detention centre for persons between seventeen and twenty-three, the sentence to be four months unless any part up to one month is remitted by the Minister of Justice. This provision is to come into effect at a date to be fixed by Order in Council.

Alters the former sentence of borstal detention for a fixed term to one of borstal training, under which no term is prescribed by the court and the parole board established by the Act determines the actual period of detention, subject to a maximum of three years. The sentence may be imposed on anyone who is between seventeen (in exceptional cases fifteen) and twenty-one.

##### 3. Corrective training and preventive detention

Provides for two new sentences—corrective training in place of the former reformatory detention, and preventive detention in place of the former declaration of an habitual criminal or habitual offender.

Corrective training is in effect an extension of borstal training to an older age group and may be imposed on an offender between twenty-one and thirty (or in special cases thirty-five) provided the offence is punishable by imprisonment for three years or more or the offender has certain other convictions and has previously undergone at least one term of probation or some form of detention. The sentence is indeterminate up to a maximum of three years, and the actual period served is decided by the parole board.

Preventive detention is also an indeterminate sentence with a minimum of three years and a maximum (except for a repeated sexual offence) of fourteen years. It may be imposed by a judge only on a person of twenty-five or over who (i) has a record of convictions and sentences sufficient to show him to be a persistent offender (detailed conditions being laid down in the Act), or (ii) has been convicted on at least one occasion since he attained the age of seventeen years of a sexual offence against a child and is again convicted of such an offence, subsequently committed.

##### 4. After-care

Provides that all persons sentenced to imprisonment for one year or more and those sentenced to borstal training or corrective training are to be on probation for at least one year after release. Persons sentenced

<sup>1</sup> Note prepared by the New Zealand Government. The Acts summarized here are published in *New Zealand Statutes 1954*, Vols. I and II. The regulations are published in *Statutory Regulations 1954*.



to preventive detention if they are released before the expiry of the sentence are to be on probation until it expires. The court may, when imposing a sentence of imprisonment of less than one year, order that on his release the offender is to be on probation for a term not exceeding one year.

*Defamation Act 1954, No. 46*

Amends the law relating to libel and slander and other malicious falsehoods.

The main changes in the law made by this Act are as follows:

1. In any action for defamation (whether libel or slander) it is no longer necessary to allege or prove special damage. Formerly, proof of special damage was required in most cases of slander.

2. In any action for slander of title, slander of goods, or other malicious falsehood, it is not necessary to allege or prove special damage if the words upon which the action is founded are calculated to cause pecuniary damage to the plaintiff.

3. If a person who has published words alleged to be defamatory of another person claims that those words were published by him innocently in relation to that other person, he may make an offer of apology and amends. In such a case, if the offer is an adequate one, it is a good defence to a subsequent action in respect of that defamation.

4. In an action for defamation in respect of words containing two or more distinct charges against the plaintiff, a defence of justification is not to fail by reason only that the truth of every charge is not proved if the words not proved to be true do not materially injure the plaintiff's reputation having regard to the truth of the remaining charges.

5. In an action for defamation in respect of words consisting partly of allegations of fact and partly of expression of opinion, a defence of fair comment is not to fail by reason only that the truth of every allegation of fact is not proved if the expression of opinion is fair comment having regard to such of the facts as are proved.

6. Reports of certain classes of proceedings of a public nature are protected in the absence of malice on the part of the publisher from actions for defamation.

*Electoral Amendment Act 1954, No. 6*

Amends the Electoral Act 1927 by providing that persons entitled to vote on declaration may vote as absent or postal voters, and includes a section stipulating the different classes of persons who, not being registered as electors of any district but being qualified to be so registered, may make a declaration that they are qualified to be registered as electors and vote as electors of the district in which they are resident; this section also applies to Maori electors.

*Historic Places Act 1954, No. 14*

Makes provision for the preservation and marking of places and things of national or local historic interest or of archaeological, scientific, educational, architectural, literary or other special national or local interest and the keeping of permanent records in relation thereto. Sets up for the purposes of the Act a trust to be called the National Historic Places Trust, and provides for the punishment of offences on the land of the Trust.

*Indecent Publications Amendment Act 1954, No. 78*

Amends the Indecent Publications Act 1910 by including in the class of documents declared *prima facie* indecent those which unduly emphasize matters of sex, horror, crime, cruelty or violence. It also adds another factor to those which the magistrate is to take into account in determining charges under the Act—namely, persons or age groups among which the document was or was intended or was likely to be circulated and its effect on such persons or groups.

The Act also provides for the registration of distributors of printed matter, the publication of the register, the marking of printed matter with the name and address of the distributor and the cancellation or suspension of registration following conviction for a breach of the Act.

*Industrial Conciliation and Arbitration Act 1954, No. 72*

Consolidates and amends the law relating to the settlement of industrial disputes by conciliation and arbitration.<sup>1</sup>

*Maori Purposes Act 1954, No. 59*

Amends the law relating to Maoris and Maori land, and confers jurisdiction upon the Maori Land Court.

*Military Training Amendment Act 1954, No. 16*

Amends the provisions of the Military Training Act 1949 by providing that the liability of every person for military service shall cease when he attains the age of thirty years, and by providing that any person who is registered in the military service register may apply to be registered as a conscientious objector and that a person already registered as a conscientious objector liable to perform non-combatant duties may apply to be unconditionally registered as a conscientious objector.

*Offenders Legal Aid Act 1954, No. 62*

Makes wider provision for the granting of legal aid in criminal proceedings by providing that a court may, at any stage of any criminal proceedings, direct that legal aid be granted to any person charged with or convicted of any offence, if in its opinion it is desirable in the interests of justice to do so. In consid-

<sup>1</sup> See the note entitled "Industrial Conciliation and Arbitration in New Zealand", in *Yearbook on Human Rights for 1953*, pp. 203-210.

ering whether to direct the grant of legal aid, it is provided that the court shall have regard to:

- (a) The means of the person charged or convicted;
- (b) The gravity of the offence;
- (c) In respect of any appeal, the grounds of the appeal;
- (d) Any other circumstances that in the opinion of the Court are relevant.

*Penal Institutions Act 1954, No. 51*

Consolidates and amends the various enactments relating to penal institutions by providing for the establishment and administration of penal institutions, the confinement and treatment of inmates, the transfer and removal of inmates, the length of sentence and offences by inmates. New provisions are as follows:

1. The Minister of Justice may appoint a classification committee for any institution, the committee's function being to report on the treatment and training of inmates.

2. Inmates may be temporarily released on parole in special circumstances.

3. Inmates may be taken outside the institution for educational, recreational or other purposes approved by the Minister of Justice.

4. For good conduct and industry the Minister of Justice may remit up to one-quarter of any sentence of imprisonment other than life. This replaces earlier provisions under which a board considered the date of release.

5. The superintendent of an institution is given limited powers to deal with offences against discipline.

6. By reason of the repeal of part III of the Prisons Act 1908, an inmate may now deal with his own property through an agent or attorney.

*Social Security Amendment Act 1954, No. 69*

Amends the Social Security Act 1938 by increasing the maximum rate of superannuation benefits and by increasing the rate of old-age, widows', invalids', minors', sickness and unemployment benefits.

This Act provides for benefits for deserted wives to be continued after divorce and amends the provisions applicable on the death of the beneficiary. It amends the provisions relating to payments in respect of hospital treatment afforded by hospital boards, to payments in respect of hospital treatment in private hospitals, and to payments in respect of hospital treatment in institutions.

*Superannuation Amendment Act 1954, No. 45*

Amends the Superannuation Act 1947 by increasing the minimum subsidy on retiring allowances and amends the provision relating to the computation of retiring allowances on the average salary for the last three years of service.

*Workers' Compensation Amendment Act 1954, No. 26*

Amends the Workers' Compensation Act 1922 by providing that the Workers' Compensation Board may establish special funds and reserves.

## II. REGULATIONS

*Agricultural Workers (Farm and Stations) Extension Order 1952, Amendments Nos. 1 and 2*

Increase the wage rates payable to agricultural and pastoral workers.

*Agricultural Workers (Market Gardens) Extension Order 1953, Amendment No. 1*

Increases the wages of agricultural workers employed in market gardens and extends the list of unions to which such workers may belong.

*Agricultural Workers (Orchardists) Extension Order 1952, Amendment No. 1*

Raises the wages of agricultural workers employed in orchards, provides that a worker, except voluntarily, may not be required to work for another employer outside of normal hours, and makes amendments as to the provision of cooking utensils and protective clothing to be supplied to workers.

*Agricultural Workers (Tobacco Growers) Extension Order 1954*

Incorporates new wage rates.

*Agricultural Workers Wages Order 1954*

Increases the wages payable to agricultural workers employed on dairy farms.

*Educational Bursaries Regulations 1940, Amendment No. 8*

Imposes restrictions upon the granting of a bursary to a student from overseas who is admitted to New Zealand on a study permit, and forbids the granting of a National Boarding Bursary or of a boarding allowance to the holder of a Special Bursary unless the applicant's home or usual place of residence at the time of his making his application is in New Zealand.

*Education (Post-primary Instruction) Regulations 1954*

Consolidate and amend the Education (Post-primary instructions) Regulations 1945 and the existing amendments of those regulations. They vary the existing regulations by leaving all of the subjects for the School Certificate Examination except English to be prescribed by the Minister of Education by notice in the "Educational Gazette"; by reducing the period within which a candidate for that examination may apply for a re-mark of his papers in one of the subjects; and by making provision for the grant of Higher School Certificates in Fine Arts.

*Education (Terms and Holidays) Regulations 1954*

Prescribe the terms and holidays for primary and post-primary schools.

*Electoral Regulations 1954*

Consolidate all the existing regulations under the Electoral Act 1927. The only alterations made are designed to simplify the regulations and the forms and procedure. In particular, the procedure as to absent voting and postal voting has been assimilated as far as possible, and other changes which have been found in practice to save time and work have been incorporated.

*Employers' Liability Insurance Regulations 1954*

Consolidate the Employers' Liability Insurance Regulations 1951 and the existing amendments and make several further amendments in the schedule of rates of premiums.

*Enemy Property Regulations 1954*

These regulations are similar in effect to the Enemy Property Emergency Regulations 1939, which have been revoked by separate order.

*Government Railways (Staff) Regulations 1953, Amendment No. 1*

Provides for an increase in salaries to workers.

*Hospital Employment (Dietitians) Regulations 1952, Amendment No. 2**Hospital Employment (Laboratory Workers) Regulations 1952, Amendment No. 2**Hospital Employment (Male Nurses) Regulations 1952, Amendment No. 2**Hospital Employment (Medical Officers) Regulations 1952, Amendment No. 2**Hospital Employment (Nurses) Regulations 1952, Amendment No. 2**Hospital Employment (Nurses) Regulations 1952 (Reprint)**Hospital Employment (Occupational Therapists) Regulations 1952, Amendment No. 2**Hospital Employment (Orthopaedic Technicians) Regulations 1952, Amendment No. 2**Hospital Employment (Physiotherapists) Regulations 1952, Amendment No. 2**Hospital Employment Regulations 1952, Amendment No. 1**Hospital Employment (Secretarial and Clerical Officers) Regulations 1952, Amendment No. 2**Hospital Employment (X-ray Workers) Regulations 1953, Amendment No. 1*

Lay down the working conditions, and/or increase the rates of remuneration, of workers in hospitals.

*Indecent Publications Regulations 1954*

Give effect to the Indecent Publications Amendment Act 1954.

*Minimum Wage Order 1954*

By this order the minimum rates of wages for adult workers are increased in the case of male workers by 1½d. an hour, 1s. a day and 5s. a week, and in the case of female workers by 1d. an hour, 8d. a day and 3s. 8d. a week.

*Noxious Substances Regulations 1954*

Make provision relating to the safety and health of persons engaged in preparing, packing, mixing, spraying, or otherwise handling noxious substances.

*Secondary Schools Bursaries Regulations 1943, Amendment No. 2*

Prohibits the award of secondary school bursaries to persons who have held technical school bursaries at any time.

*Social Security (Hospital Benefits) Regulations 1954*

Consolidate the existing provisions of the Social Security (Hospital Benefits) Regulations 1939, relating to payments out of the Social Security Fund in respect of the hospital treatment of in-patients of hospitals.

*Social Security (Laboratory Diagnostic Services) Regulations 1946, Amendment No. 3*

Prescribes a new scale of fees payable from the Social Security Fund for laboratory diagnostic services provided, in accordance with the principal regulations.

*Social Security (Maternity Benefits) Regulations 1939, Amendment No. 4*

Provides for fees to be paid to hospital boards and licensees of licensed maternity hospitals in respect of maternity services provided.

*Social Security (Maternity Benefits) Regulations 1939, Amendment No. 5*

Provides that the increased fees of £1 10s. a day payable to hospital boards and licensees of maternity hospitals for maternity benefits are to apply in all cases where the benefits have been provided on or after 1 October 1954, and not only where the birth occurred on or after that date.

*Social Security (Physiotherapy Benefits) Regulations 1951, Amendment No. 1*

Provides that payments for physiotherapy benefits may be made from the Social Security Fund to contracting physiotherapists in respect of patients who have received treatment by way of remedial exercises as members of a group of not less than two nor more than ten persons.

*Workers' Compensation Order 1954*

Increases the maximum and minimum payments of workers' compensation as a result of the recent general order of the Court of Arbitration increasing rates of remuneration.

1. The maximum amount of compensation payable on death or incapacity is increased from £2,370 to £2,430, or from £2,700 to £2,770 in cases where weekly payments and a lump sum on death are both paid.

2. The minimum amount payable on death is increased from £825 to £850.

3. As regards weekly payments, the minimum amount is increased from £2 4s. to £2 5s. a week, and the maximum amount is increased from £8 16s. to £9 1s. a week.

### III. JUDICIAL DECISIONS

#### MIDLAND MOTORWAYS SERVICE, LIMITED *v.* BAIRD *Supreme Court*<sup>1</sup>

Session held in Dunedin, 3 May – 23 June 1954

McGregor J.

The New Zealand Railways Department filed with the Transport Licensing Authority an application to amend its passenger service time-table in order to provide a service leaving the city of Invercargill at 1 p.m. Notice was given that the Transport Licensing Authority would hold a public sitting for the purpose of receiving evidence and representations. The plaintiff company had lodged with the Transport Licensing Authority a prior application for a licence to run an identical passenger service; and the application of the Railways Department was adjourned so that the company's own application could first be decided. At a later date the company's application was refused.

Shortly afterwards, the Authority purported to change its method of procedure in dealing with the Railways Department's application for amendment. It decided not to hold a public hearing; and gave a public notice specifying the time up to which it would receive written representations. This notice was published in the newspapers, but did not come to the notice of the plaintiff company, which knew nothing further of the outcome of the application until, two months after it had been granted, it became aware that the Railways Department was operating an amended time-table.

The company sought an order quashing the Licensing Authority's decision approving the Railways Department's application for amendment. The company claimed that it was deprived of its right to make representations objecting to the application and, in particular, that the action of the Licensing Authority, in purporting to grant the department's application without giving the plaintiff the right to be heard, was a denial of natural justice. Having once decided to hold a public hearing, it was not open to the Authority to change its procedure by calling for written representations.

<sup>1</sup> *New Zealand Law Reports* (1954) 955.

The court held that the Licensing Authority had no authority to change its procedure in the course of dealing with the Railways Department's application. There was therefore a defect of jurisdiction in the granting of the application. The licensing authority was acting in a judicial capacity, and, before an amendment could be granted, it was bound to give the persons concerned a reasonable opportunity of being heard. The decision of the licensing authority in granting the Railways Department's application was therefore quashed.

#### DUNN *v.* THE QUEEN

*Court of Appeal, Wellington*<sup>2</sup>

3–14 July 1954

Gresson J., North J., Turner J.

The appellant was tried on an indictment containing two counts. The first involved being in charge of a motor vehicle while under the influence of drink or a drug, and the second alleged that the appellant drove a motor vehicle negligently and thereby caused death. The jury disagreed on the first count and the Crown filed a stay of proceedings. On the second count the appellant was convicted and sentenced to twelve months' imprisonment. He appealed against sentence.

On appeal, it was held that it is not the function of the court which has to pass sentence for a particular offence of which a man has been found guilty to add to that sentence some further term of imprisonment for the commission of a supposed offence of which the jury has not found him guilty. It might not be improper, in a case of negligent driving, for the sentencing judge to have regard to evidence of the prisoner's condition; but, on the facts of this case, where there was a disagreement on the part of the jury as to whether the driver was intoxicated, the evidence on that charge should not affect the length of the sentence. The sentence was quashed and in lieu thereof a sentence of six months' imprisonment with hard labour was imposed.

### IV. INTERNATIONAL INSTRUMENTS CONTAINING PROVISIONS ON HUMAN RIGHTS

*The Social Policy (Non-Metropolitan Territories) Convention, 1947*, adopted by the General Conference of the International Labour Organisation at Geneva, 11 July 1947 (No. 82)

New Zealand instrument of ratification<sup>3</sup> deposited 19 June 1954. In force for New Zealand 19 June, 1955. Applies to the Cook Islands (including Niue) and the Tokelau Islands.

<sup>2</sup> *New Zealand Law Reports* (1954) 1009.

<sup>3</sup> *New Zealand Treaty Series* 1954, No. 2 (*External Affairs Publication No. 143*).

## NICARAGUA

### NOTE

Decree No. 52 of 4 April 1954 (*La Gaceta* No. 79, of 5 April 1954) suspended the exercise throughout the national territory of the constitutional guarantees laid down in articles 38-41, 45, 54, 58-60, 63, 113, 115, 124, and 125 of the Constitution (see *Yearbook on Human Rights for 1950*, pp. 206-208 and 211) and declared martial law applicable throughout the period of suspension of these guarantees. The decree was to be abrogated on the cessation of the causes on account of which it was made and the Executive Power was immediately to account to the Congress for the measures taken. The preamble of the decree recalled an attempt made to disturb the public order,

the secret introduction of arms with the intention of threatening the peace and security of the nation and its institutions and form of government and the discovery of weapons in the hands of known revolutionaries, all pointing to the danger of the outbreak of a civil war. The decree was adopted under article 197 of the Constitution (see *Yearbook on Human Rights for 1950*, pp. 211-212), which lays down the circumstances under which the exercise of constitutional guarantees may be suspended or restricted, the guarantees which may not be affected by such suspension or restriction and certain other provisions governing the suspension or restriction of constitutional guarantees.

# NORWAY

## NOTE<sup>1</sup>

### I. CONSTITUTION

In 1954, a new paragraph 110, which may be regarded as having an important bearing on human rights, was introduced into the Norwegian Constitution. It reads as follows:

"The State authorities shall take steps to ensure that every able-bodied person is able to earn a livelihood by his work."

This was promulgated on 26 November 1954 and was published in *Norsk Lovtidend* (Part 2) 1954, p. 549.

The proposal for para. 110 of the Constitution was made in the *Storting* in 1952 by representatives of all the political parties then represented in Parliament (proposal No. 18 in document of the *Storting* No. 11 of 1952). It was put to the vote in the autumn of 1954 and adopted by 135 votes to 9. It is clear from both the wording of the provision and the preparatory documents<sup>2</sup> that the paragraph does not give any right to the individual citizen but contains a directive to the state authorities to maintain such a policy that mass unemployment is avoided.

### II. LEGISLATION

An Act of 25 June 1954 introduced a new article 26a into the Act of 22 April 1927 on the admission of aliens to Norway. The new article provides, *inter alia*, that the King, by agreement with a foreign State, may prescribe that the nationals of the said State shall not require a permit to reside and work in Norway. The Act is published in *Norsk Lovtidend* (Part 2) 1954, p. 272. An agreement of this kind (concerning a common labour market) has been entered into with Denmark, Finland, Iceland and Sweden.<sup>3</sup>

Insurance rights have been extended under the Act of 26 November 1954 on compensation for war injuries. (See *Norsk Lovtidend* (Part 2) 1954, pp. 555-568.)

Insurance and pension rights have been extended under the following amending Acts:

Act of 21 May 1954 amending the Old-age Pensions Act of 16 July 1936;

<sup>1</sup> Note received through the courtesy of the Department of Justice and Police, Oslo. Translation from the Norwegian text by the United Nations Secretariat.

<sup>2</sup> The preparatory work concerning the provision is to be found in *Stortingsinnstilling* No. 220, of 1954, and in *Stortingsridende* 1954, pp. 2627-2649.

<sup>3</sup> See the agreement of 22 May 1954, in section III below.

Act of 4 June 1954 amending the Provisional Act of 16 July 1936 on assistance to blind and disabled persons;

Act of 18 June 1954 amending the Act of 13 December 1946 on war pensions for members of the home guard and civilians;

Act of 18 June 1954 amending the Act of 24 June 1931 on accident insurance for seamen; and

Act of 26 November 1954 amending the Act of 30 June 1950 on pensions for civil servants.

The relevant provisions are published in *Norsk Lovtidend* (Part 2) 1954, pp. 190-191, 197-198, 242-243, 243-244, and 568-570, respectively.

### III. INTERNATIONAL TREATIES AND AGREEMENTS

In addition to agreements concluded through the United Nations or the Council of Europe, during 1954 Norway concluded the following agreements having a bearing on human rights:

Convention of 20 July 1953 between Norway, Denmark, Finland, Iceland and Sweden on reciprocal maternity grants; signed in virtue of the powers conferred by royal decree of 7 July 1953. Ratified in virtue of royal decree of 2 April 1954. Instrument of ratification deposited on 13 May 1954. The Convention entered into force in respect of Norway on 1 August 1954.

Convention of 20 July 1953 between Norway, Denmark, Iceland and Sweden on the reciprocal transfer of members of sickness insurance funds and on sick benefits during temporary residence; signed in virtue of the powers conferred by royal decree of 7 July 1953. Ratified in virtue of royal decree of 2 April 1954. Instrument of ratification deposited on 13 May 1954. The Convention entered into force in respect of Norway on 1 August 1954.

Convention of 20 July 1953 between Norway, Denmark, Finland, Iceland and Sweden on reciprocity in regard to the payment of benefits for reduced earning capacity; signed in virtue of the powers conferred by royal decree of 7 July 1953. Ratified in virtue of royal decree of 2 April 1954. Instrument of ratification deposited on 13 May 1954. The Convention entered into force in respect of Norway on 1 August 1954.

Additional protocol of 30 December 1954 to the

Convention of 20 July 1953 between Norway, Denmark, Iceland and Sweden on the reciprocal transfer of members of sickness insurance funds and on sick benefits during temporary residence; signed in virtue of the powers conferred by royal decree of 23 December 1954.

Convention of 26 June 1952 on holidays with pay in agriculture. (Government bills Nos. 65, 1953 and 46, 1954; and parliamentary order No. 177, 1954.) Ratified in virtue of the Crown Prince Regent's decree of 20 August 1954. Ratification registered with the International Labour Office on 30 September 1954. Convention will enter into force in respect of Norway on 30 September 1955.

Convention of 28 June 1952 on minimum standards of social security. (Government bill No. 46, 1954;

and parliamentary order No. 117, 1954.) Parts II, III, IV, V, VI and VII of the Convention ratified in virtue of the Crown Prince Regent's decree of 20 August 1954. Ratification registered with the International Labour Office on 30 September 1954. The above-mentioned parts of the Convention will enter into force in respect of Norway on 30 September 1955.

Agreement of 22 May 1954 between Norway, Denmark, Finland and Sweden on a common labour market, with relevant protocol; signed in virtue of royal decree of 19 March 1954. (Government Bill No. 96, 1954; and parliamentary order No. 159, 1954.) Ratified in virtue of royal decree of 25 June 1954. Instrument of ratification deposited on 2 July 1954. The Agreement entered into force on 2 July 1954.

# PAKISTAN

## FREEDOM OF THE PRESS<sup>1</sup>

1. Pakistan is dedicated to the principles of freedom of speech and of free expression of opinion. The press is free. There are no restrictions on the expression of views in newspapers, on the circulation of news by news agencies or on the transmission of news abroad, other than those enacted in penal texts. The "Objectives Resolution" passed by the Constituent Assembly of Pakistan on 12 March 1949<sup>2</sup> guarantees fundamental rights, including freedom of thought and expression, subject to law and public morality. Publication of newspapers, etc., is regulated by the following legislation, most of which has been in force since the days of the British rule in pre-partitioned India.

1. The Press and Registration of Books Act, 1867.
2. The Press (Emergency Powers) Act, 1931.
3. The Security of Pakistan Act, 1952.
4. The Pakistan Penal Code.
5. The Criminal Procedure Code.
6. The Sea Customs Act, 1878.
7. The Telegraphs Act, 1885.
8. The Post Offices Act, 1895.
9. The States (Protection against Disaffection) Act, 1922.
10. The Foreign Relations Act XII of 1932.

2. The provisions of the last seven Acts are of a very limited and specific nature; those of the first three Acts are explained below.

3. The main provision of the Press and Registration of Books Act, 1867, relates to "declarations" in connexion with the publication of newspapers, etc., and is of a routine and regulative nature. Under this Act, every individual who has attained maturity is entitled to file a "declaration" and the magistrate before whom the "declaration" is made has no authority to reject it or refuse to receive it.

<sup>1</sup> Note prepared by the Government of Pakistan.

<sup>2</sup> See the text in *Yearbook on Human Rights for 1950*, p. 217; see also *idem for 1949*, p. 160.

4. The Press (Emergency Powers) Act of 1931 makes provisions for the following:

- (a) Requirement of security.
- (b) Forfeiture of security.
- (c) Enrollment of declaration.
- (d) Seizure of documents.
- (e) Regulation of matter appearing in newspapers.
- (f) Unauthorized news sheets and newspapers.
- (g) Appeals to High Courts.

5. The Press and Registration of Books Act, as implied above, does not confer powers to deal with objectionable writings. These powers are conferred on the Government by the Press (Emergency Powers) Act of 1931. The existing press laws are being reviewed by a Press Commission appointed by the Government with a view to making such recommendations as may be necessary for amendment, revision or consolidation of the laws.

6. The Public Safety Acts contain provisions relating to the precensorship and suppression of publications and to banning their entry in any province of Pakistan. Although these Acts do not provide for appeals to the high courts, under the Security of Pakistan Act,<sup>3</sup> the authority making the order is required to place before the Advisory Board the grounds on which the order has been made and the representation, if any, made by the person or persons affected by the order. The Advisory Board consists of two persons who are, or have been, qualified to be judges of a high court. The present members of this Advisory Board are Mr. Justice Vellani, a judge of the Sind Chief Court and Mr. Justice Mansoor Alam, a former judge of the Allahabad High Court. It should be noted in this connexion that for several years no action had been taken against the press under the Security of Pakistan Act by the Central Government. In any case, the Public Safety Acts are purely emergency measures and may be repealed any time the Government considers that the emergency no longer exists.

<sup>3</sup> See *Yearbook on Human Rights for 1952*, pp. 212-216.



## GENERAL NOTE

## I. CONSTITUTIONAL AMENDMENTS

The Government of India (Amendment) Act, 1954 (*Gazette of Pakistan*, Extraordinary, of 16 July 1954) provides that after section 223 of the Government of India Act, 1935, which defines the jurisdiction of existing high courts, a new section shall be inserted, namely:

"223 A. Every high court shall have power throughout the territories in relation to which it exercises jurisdiction to issue to any person or authority including in appropriate cases any government within those territories writs including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari* or any of them."

The Government of India (Second Amendment) Act, 1954 (*Gazette of Pakistan*, Extraordinary, of 17 July 1954) provides for the representation of the inhabitants of those areas which, by orders of 1952 and 1953, have been added to the North-West Frontier Province. For this purpose, the total number of seats in the Legislative Assembly of the North-West Frontier Province was increased from 85 to 87 and the number of Moslem seats from 82 to 84. The table showing the distribution of all seats in the Provincial Legislative Assemblies of Pakistan and published in the *Yearbook on Human Rights for 1952*, p. 211, is to be modified accordingly.

## II. LEGISLATION

The Security Detention Rules, of 20 May 1954 (*Gazette of Pakistan* No. 22, of 28 May 1954) apply to detenus including any person in detention who at the commencement thereof was detained under the Pakistan Public Safety Ordinance, 1949 (XIV, of 1949), or the Pakistan Public Safety Ordinance, 1952 (VI, of 1952), or the Security of Pakistan Act, 1952 (XXXV, of 1952).<sup>1</sup> Articles 4 and 5 of the rules read as follows:

"4. When any person detained under the Security of Pakistan Act, 1952 (XXXV of 1952), is placed in a jail, the Government shall intimate the fact to the Inspector-General and inform him of any special directions which may have been given relating to the custody, allowances, dieting and treatment of the detenu.

"5. (1) The Central Government shall, through the government in whose custody a detenu is placed, communicate to the detenu within one month of the date of the commencement of the detention, the

grounds on which the order of detention had been made, to enable the detenu, if he so wishes, to make a representation in writing against the order. The detenu shall be informed of his right to make such a representation.

"(2) The government shall intimate to the Central Government the date on which the grounds are communicated to the detenu, and shall forward to the Central Government any representation that may be made by the detenu."

A detenu shall be kept in a cell or association ward, preferably in the latter, and allowed to communicate freely with other detenus but shall, so far as possible, be kept separate from other prisoners. Special facilities regarding furniture and allowances, discipline and search, photographs and fingerprints, interviews, police interviews, exercises and occupation, books, newspapers and writing materials, correspondence and censorship are dealt with in the same text.

The Baluchistan Reformatory School Rules, of 4 May 1954 (*Gazette of Pakistan* No. 20, of 14 May 1954) provide that youthful offenders convicted of certain specified offences by a magistrate or court may be sent by such magistrate or court to a reformatory school instead of undergoing a heavier penalty under other laws, provided that the offender does not suffer from certain diseases or from any permanent physical incapacity for industrial employment, or that he has not been more than twice previously convicted and sentenced for certain offences, or that he has not been imprisoned for a period or periods amounting to three months in all. The Rules determine the period of time during which a youthful offender over or under eleven years of age at the time of his conviction shall attend the reformatory school.

By Notification of 24 July 1954 (*Gazette of Pakistan*, Extraordinary, of the same date), the Chief Commissioner of Karachi declared the Communist Party and all other associations in whatsoever manner connected with that party to be unlawful within the meaning and for the purpose of Part II of the Criminal Amendment Act, 1908.<sup>2</sup> An analogous notification was issued by the agent to the Governor-General and Chief Commissioner in Baluchistan on 24 July 1954 (*Gazette of Pakistan* No. 32, of 6 August 1954).

<sup>1</sup> The Security of Pakistan Act, 1952, is published in *Yearbook on Human Rights for 1952*, pp. 212-216.

<sup>2</sup> Section 16 of the Criminal Law Amendment Act, 1908 (No. XIV of 1908), provides that if the local government is of the opinion that any association interferes or has for its object interference with the administration of the law or with the maintenance of law and order, or that it constitutes a danger to the public peace, the local government may, by notification in the *Official Gazette*, declare such association to be unlawful.

## PANAMA

### LEGISLATIVE DECREE No. 14 OF 27 AUGUST 1954 AMENDING ACT No. 134 OF 27 APRIL 1943, ON THE SOCIAL INSURANCE FUND

#### NOTE

Legislative decree No. 14 (*Gaceta Oficial* No. 12467, of 10 September 1954) made provisions for the according of insurance benefits in the event of sickness, maternity, invalidity, old age and death, in each case laying down the conditions of eligibility and the type of benefit. Social insurance was made compulsory for most employed persons except the self-employed, the exceptions being stated.

The Social Insurance Fund, possessing legal personality under Act No. 134 of 27 April 1943, was to continue to be responsible for the management and administration of the system. The means of financing the scheme were among the other matters dealt with.

Extracts from the legislative decree appear in English and French translation in the *Legislative Series* of the International Labour Office, 1954—Pan. 1.

## PARAGUAY

### ACT No. 236 ON THE CIVIL RIGHTS OF WOMEN

of 6 September 1954<sup>1</sup>

#### TITLE I

#### GENERAL

*Art. 1.* A woman of full age (whether single, divorced or widowed) shall have the capacity to exercise and perform all the civil rights and func-

<sup>1</sup> Spanish text in *Gaceta Oficial* No. 129, of 6 September 1954. Translation by the United Nations Secretariat.

tions which are by statute vested in a man of full age.

...

*Art. 5.* Wife and husband shall have the same rights and capacity, subject to such limitations as are necessitated by the unity of the family and by the diversity of the social functions of each.

...

### NOTE ON A CONSTITUTIONAL AMENDMENT OF 19 DECEMBER 1954 RELATING TO PARAGUAYAN CITIZENSHIP

Articles 38-43 of the Constitution of Paraguay of 10 July 1940 relate to nationality and citizenship.<sup>1</sup> Article 41, paragraph 4, provided that a person shall cease to be a Paraguayan citizen if he is naturalized

<sup>1</sup> See United Nations Legislative Series: *Laws concerning Nationality*, United Nations, New York, 1954, pp. 375-376.

in a foreign country. On 19 December 1954, this provision was replaced by one to the effect that all Paraguayans residing outside the country who acquire another nationality or citizenship in order to meet the requirements of the laws of the country of residence shall not lose their Paraguayan nationality or citizenship.

## PHILIPPINES

### NOTE<sup>1</sup>

#### *Freedom from Arbitrary Detention*

Republic Act No. 1083, of 15 June 1954, amending article 125 of the Revised Penal Code, punishes any public officer or employee "who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of: six hours, for crimes or offenses punishable by light penalties, or their equivalent; nine hours, for crimes or offenses punishable by correctional penalties, or their equivalent; and eighteen hours, for crimes or offenses punishable by afflictive or capital penalties, or their equivalent". The Act further provides that the person detained shall, in every case, be informed of the cause of his detention and shall be allowed, upon his request, to communicate and confer at any time with his attorney or counsel.

#### *Liberty and Security of Person*

Republic Act No. 1084, of 15 June 1954, modifies section 267 of the Revised Penal Code, as amended, concerning kidnapping and serious illegal detention. The Act provides that "any private individual who shall kidnap or detain another shall suffer the penalty of *reclusión perpetua* to death:

"1. If the kidnapping or detention shall have lasted more than five days.

"2. If it shall have been committed simulating public authority.

"3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained; or if threats to kill him shall have been made.

"4. If the person kidnapped or detained shall be a minor, female or a public officer.

"The penalty shall be death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances above mentioned were present in the commission of the offense."

#### *Social Security*

Republic Act No. 1161, of 18 June 1954, establishes a social security system for employees. Section 2 provides that it is declared "to be the policy of the Republic of the Philippines to develop, establish, gradually and perfect a social security system which shall be suitable to the needs of the people throughout

the Philippines, and shall provide protection against the hazards of unemployment, disability, sickness, old age and death". To carry out the purposes of the Act, a Social Security Commission is established. The Commission is empowered, *inter alia*, to select one or more experimental areas wherein any, some or all of the aspects of social security may be initially tried, and to extend subsequently the experimentation to such other areas and industry or industries as experience and conditions obtaining therein may warrant. In the areas where the social security system applies, coverage in the system shall be compulsory upon all employees between the ages of eighteen and sixty years, inclusive, if they have been for at least six months in the service of an employer who is a member of the system. The Commission, however, may not compel an employer to become a member of the system (a) unless he shall have been in operation for at least three years and has, at the time of admission, 200 employees; (b) if he made no profit in any one year for the last three consecutive years; or (c) if he is maintaining for his employees an equivalent plan to which the employee's compulsory contributions are not higher nor the employer's contribution lower than those required in the Act. The Commission may also prescribe rules and regulations for voluntary coverage under the system.

#### *Protection of Labour*

Republic Act No. 1052, of 12 June 1954, provides that "in cases of employment, without a definite period, in a commercial, industrial or agricultural establishment or enterprise, neither the employer nor the employee shall terminate the employment without serving notice on the other at least one month in advance", and that the employee who is not served such notice shall be entitled to one month's compensation from the date of termination of his employment.

Republic Act No. 1054, of 12 June 1954, requires the owner, lessee or operator of any shop, factory, estate or commercial, industrial or agricultural establishments, whether the same be an individual, corporation or partnership, or government-owned or government-controlled corporation, or the national Government, or a provincial or municipal government, or the government of any political subdivision whatsoever, who habitually employs in any locality employees or laborers, to furnish free emergency medical and dental attendance to his employees and laborers, as follows:

"(a) If the number of employees and laborers is

<sup>1</sup> Note based on texts and information received through the courtesy of the Department of Foreign Affairs of the Republic of the Philippines.

not less than thirty nor more than two hundred, the owner, lessee, or operator shall keep a stock of emergency medicines under the charge of a nurse for the use of his employees and laborers, and shall furnish free emergency medical and dental attendance to them, except when, within a radius of one kilometer from the commercial, industrial, or agricultural establishment there is a public dispensary furnishing medicine free of charge to poor applicants or a pharmacy where the employer can buy the same for the purposes of this Act, the keeping in stock of emergency medicine shall not be necessary to do so, in the discretion of the Secretary of Labor or his authorized representatives: *Provided, however*, that this exemption shall not apply in cases where the number of employees and laborers exceeds one hundred but is not greater than two hundred.

“(b) When the number of employees and laborers exceeds two hundred but is not greater than three hundred, the owner, lessee, or operator, in addition to keeping a stock of emergency medicines under the charge of a nurse shall employ the services of a permanent or retained physician and a permanent or retained dentist for the benefit of employees and laborers, and provide a room of strong materials, properly ventilated, and adequate enough to meet cases of emergency.

“(c) When the number of employees exceeds three hundred, the owner, lessee, or operator in addition to keeping a stock of medicines and employing, in full, the services of a physician and a dentist for the purposes specified in the preceding two subsections, shall maintain a dental clinic and an infirmary or emergency hospital of sufficient capacity of one bed for each hundred employees, except where this shall be unnecessary because of the existence of a dental clinic and of a hospital in the place, at a distance not greater than two kilometers from the commercial, industrial, or agricultural establishment. In such cases, the owner, lessee, or operator may enter into an agreement with said dental clinic and hospital to reserve the necessary number of beds for the purposes specified in this subsection: *Provided*, that the number of beds may be increased to three for each two hundred laborers and employees according to the nature of the establishment, at the discretion of the Secretary of Labor.”

#### *Rehabilitation of the Handicapped*

Republic Act No. 1179, of 19 June 1954, is designed to promote the vocational rehabilitation of the blind and other handicapped persons and their return to civil employment. The Act establishes a Vocational Rehabilitation Office as the sole agency for the administration, supervision and control of the vocational rehabilitation programme.

#### *Agricultural Land Tenancy*

Republic Act No. 1199, of 30 August 1954, regulates the relations between landholders and tenants of

agricultural lands. According to section 2, it is the purpose of the Act “to establish agricultural tenancy relations between landholders and tenants upon the principle of social justice; to afford adequate protection to the rights of both tenants and landholders; to insure an equitable division of the produce and income derived from the land; to provide tenant-farmers with incentives to greater and more efficient agricultural production; to bolster their economic position and to encourage their participation in the development of peaceful, vigorous and democratic rural communities.”

#### *Labour Relations*

Republic Act No. 1167, of 18 June 1954 punishes any person who wilfully obstructs or interferes with peaceful picketing by workers or employees during any labour controversy or who knowingly aids or abets such obstruction or interference, in a manner not otherwise provided against by existing law.

A provincial circular sent by the Executive Office on 5 October 1954 to all provincial governors and city mayors indicates the proper norm of conduct to be observed by peace officers during strikes. The circular states, *inter alia*, that “picketing guaranteed by the freedom of speech clause of the Constitution is limited to peaceful persuasion, thereby removing from its protection the use of violence, threat, intimidation or misrepresentation, of the use of such numbers as to prevent ingress to or egress from the picketed establishment”; and that peace officers should observe complete impartiality in the maintenance of peace and order.

#### *Employment of Women and Children*

Republic Act No. 1131, of 16 June 1954, amends sections 3, 7 and 12 of Republic Act No. 679, regulating the employment of women and children. The Act prohibits the employment of: (a) women below eighteen years as hostess, waitress, individual entertainer or escort for men, taxi-dancer, professional dance partner, attendant, or in any other similar capacity in any bar, night club, dance hall, or one of a number of other places of work; (b) persons below eighteen years, in any pharmacy or laboratory for the preparation of drugs or pharmaceutical or chemical products; (c) persons below eighteen, in any shop, factory or industrial or commercial establishment where the work done involves preparation of or contamination with noxious, infectious or explosive substances, or serious danger to life; (d) women, regardless of age, in certain types of work, such as those requiring the employee to work always standing or involving lifting of heavy objects. The Act also makes it unlawful for any employer, *inter alia*, to discharge any woman on account of her pregnancy or while on leave or in confinement due to her pregnancy; to discharge any woman or child for having filed a complaint or given testimony under the Act; to discharge any woman or child for any other cause not attributable to his or her fault.

## JUDICIAL DECISION

## RIGHT TO WORK—DUE PROCESS OF LAW

PHILIPPINE MOVIE PICTURES WORKERS' ASSOCIATION *v.* PREMIERE PRODUCTIONS, INC.*Supreme Court of the Philippines*<sup>1</sup>

25 March 1953

*The facts.* Respondent had filed with the Court of Industrial Relations an urgent petition seeking authority to lay off forty-four men on the grounds that there was a lack of work for them to do and that the company was suffering financial losses during the year. Petitioner had opposed the request, alleging that the company's claim of financial losses was not true and that the laying-off of the workers was an act of retaliation by the company for the strike staged by the workers. When the case was called for hearing, the court had decided to make an ocular inspection of the studios and filming premises. Some workers found on the premises were questioned by the presiding judge of the court and by counsel of both parties. The court had also examined some of the records of the respondent company, among them the time cards of some workers, which showed that, while the workers had reported for work, they were no longer in the premises at the time when the inspection was made. On the strength of the findings made in the ocular inspection, the court had reached the conclusion that the petition for laying-off the workers concerned was justified because there was no more work for them to do in connexion with the different jobs given to them.

The petitioner, representing the workers, filed the present petition with the Supreme Court to set aside the order of the Court of Industrial Relations. The only issue submitted to the Supreme Court for consideration was whether the Court of Industrial Relations was justified in authorizing the lay-off of the workers on the basis of an ocular inspection without receiving full evidence to determine the cause or motive of such lay off.

<sup>1</sup> Text of the decision in *Official Gazette of the Republic of the Philippines* Vol. 50, No. 3, pp. 1096-1100, kindly made available by the Department of Foreign Affairs of the Republic of the Philippines. Summary by the United Nations Secretariat.

*Held.* That the order allowing the company to lay off the workers be set aside, and the case remanded to the court of origin for further proceedings. The Court said, *inter alia*: "The right to labour is a constitutional as well as a statutory right. Every man has a natural right to the fruits of his own industry. A man who has been employed to undertake certain labour and has put into it his time and effort is entitled to be protected. The right of a person to his labour is deemed to be property within the meaning of constitutional guarantees. That is his means of livelihood. He cannot be deprived of his labour or work without due process of law." While the Court of Industrial Relations may adopt its own rules of procedure and may act according to justice and equity without regard to technicalities, the Court went on, it may not ignore or disregard the fundamental requirement of due process in trials and investigations of cases brought before it for determination. There are certain cardinal rights which the court must respect in the trial of every labour case, and one of these is the right of a party to present his own case and submit evidence in support thereof. An ocular inspection of the establishment was merely an auxiliary remedy which the law afforded to the parties or the court to reach an enlightened determination of the case, but it was not the main trial, nor should it exclude the presentation of other evidence which the parties might deem necessary to establish their case. The petition for lay-off was predicated on the lack of work and on the fact that the company was incurring financial losses; these allegations could not be established by a mere inspection of the place of labour, especially when such inspection was conducted at the request of the interested party. The fundamental issue could not be determined without looking into the financial situation of the respondent company.

## POLAND

### RULES OF THE FEDERATION OF TRADE UNIONS IN POLAND

Adopted by the Third Congress of the Federation, 5-9 May 1954

#### EXTRACT<sup>1</sup>

##### PART I

##### RIGHTS AND DUTIES OF TRADE UNION MEMBERS

1. Trade union membership shall be open to any worker or employee employed in an undertaking, organization or institution or attending a trade school.

2. A trade union member shall have the right:

(a) To participate in trade union meetings,

(b) To vote and to be a candidate in elections to all trade union offices,

(c) To apply to the union in all questions relating to his work and living conditions,

(d) To apply to the trade union for the protection of his rights in the event of any violation, by the administration of his place of work, of the employment contract or collective agreement or of statutory provisions relating to working conditions, social insurance or economic and cultural rights,

<sup>1</sup> Text received through the courtesy of the Permanent Mission of Poland to the United Nations. Translation from the Polish text by the United Nations Secretariat.

The Federation of Trade Unions in Poland has been accorded a special legal status by the Act of 1 July 1949 on trade unions (*Dziennik Ustaw Rzeczypospolitej Polskiej*, 15 July 1949, No. 41, text 293, p. 853).

A summary of the Act appeared in *Yearbook on Human Rights* for 1949, p. 174. Articles 3, 5, 6 and 7 of the Act read as follows:

"3. The statute of the Federation of Trade Unions in Poland and the statutes of the trade unions composing the Federation shall lay down the functions, objects and sphere of action of the trade unions. The statute of the Federation of Trade Unions in Poland shall be adopted by the Congress of Trade Unions in Poland.

"5. (1) The principal body representing the trade union movement in Poland shall be the Federation of Trade Unions.

"(2) The Federation of Trade Unions in Poland shall be a body corporate.

"6. The supreme authorities of the Federation of Trade Unions in Poland shall be:

(1) The Congress of Trade Unions;

(2) The Central Council of Trade Unions.

"7. The manner in which and means by which delegates shall be elected to the Congress, the number of delegates, and the intervals at which the Congress of Trade Unions shall be convened shall be laid down in the statute of the Federation of Trade Unions in Poland."

A translation into English of the full text of the Act appears in *Legislative Series*, 1949—Pol. 2 of January-February 1952, published by the International Labour Office.

sions relating to working conditions, social insurance or economic and cultural rights,

(e) To appraise and to criticize at union meetings, conferences and congresses and in the press the activity of local and central trade union authorities and of administrative organs, and to submit suggestions and complaints to any trade union authority,

(f) To attend in person, at his request, on any occasion on which the union authorities take a decision affecting him personally.

3. It shall be the duty of a trade union member:

(a) To work conscientiously, and faithfully to observe socialist labour discipline,

(b) To protect and enlarge public property, the common patrimony of all workers, and to combat waste and defective work,

(c) Constantly to improve his professional skill,

(d) To comply with the provisions of the rules and with the decisions of the trade union authorities, to take part in union life and to pay his membership dues regularly.

4. A trade union member shall be entitled:

(a) To the use of holiday rest homes and to priority in admission to sanatoria and health resorts,

(b) To priority in the use of maternal and child care institutions, such as nurseries, kindergartens, summer camps, preventoria and the like,

(c) To receive from the trade union, according to his seniority, a free grant of a fixed amount on the birth of a child or in certain cases of emergency,

(d) To membership in mutual assistance and loan funds,

(e) To the use of cultural, sports and tourist facilities provided by the trade union,

(f) To free legal assistance provided by union organs.

5. Trade union membership shall be granted by the union group meeting, on the personal application of the candidate, and shall be confirmed by the shop (local) council, or by the branch council, where such a council exists.

In trade union organizations which have no union groups, union membership shall be granted by the general meeting of union members.

Evidence of membership shall be constituted by the union card.

6. If a trade union member is transferred to a place of work which is covered by another trade union, his membership shall be transferred to the latter trade union without loss of seniority.

The period of service in the Polish armed forces shall be counted in determining a trade union member's seniority.

Trade union members who have ceased working for reasons of health or age and who receive pensions shall retain the right to belong to a union.

Seasonal workers and employees shall retain their seniority if they resume work in the following season.

7. The following penalties may be imposed upon trade union members for infringement of the union rules or union discipline: warning, reprimand and, the most severe penalty, expulsion from the union.

Decisions to impose a trade union penalty may be taken by the union group meeting, the general meeting of trade union members or a higher union authority.

A decision of a union group ordering expulsion from the union shall be subject to confirmation by the shop council.

A decision imposing a penalty on a union member must be taken in his presence. Union members shall have the right to appeal against such decisions to the superior union authority.

## REPORT OF THE STATE COMMISSION FOR ECONOMIC PLANNING ON THE FULFILMENT OF THE NATIONAL ECONOMIC PLAN FOR 1954

### EXTRACTS<sup>1</sup>

#### 9. INCREASE IN NATIONAL INCOME AND RISE IN MATERIAL AND CULTURAL LEVEL OF WORKING PEOPLE

In 1954, the national income rose by some 7 per cent as compared with 1953. The planned targets for national income were not completely achieved, primarily owing to the underfulfilment of the plan for agricultural production and for the reduction of costs of materials.

The reduction of prices of consumer goods and services carried out on 1 May, together with the re-pricing of a variety of consumer products, added more than 4,000 million zlotys to the purchasing power of the population in 1954. A further factor in the reduction of the price level in 1954 was the price-cut introduced in November 1953. Taken together, the two reductions brought about a saving to consumers amounting to more than 8,000 million zlotys in 1954.

Wage regulations were promulgated for a number of categories of workers, including miners, employees of state tractor stations (POM) and state farms (PGR), teachers, scientific workers, railwaymen, physicians and engineering and technical workers in several branches of industry. Retirement and other pensions were increased. Social insurance and sickness benefits and family allowances rose by 11 per cent.

In 1954 the volume of compulsory deliveries was maintained at its existing level, while the range of special allowances and exemptions was extended. Improvements were made in the conditions for purchases and orders of many agricultural products, especially oleaginous and fibre plants.

The real wages of workers employed in the socialist sector of the economy and in the administration increased by some 12 per cent. The real income of peasants (including production for personal consumption) showed an average increase of some 11 per cent as compared with 1953.

Additional factors in the improved level of living, as in previous years, were the increase in new housing construction, and in capital repairs of dwellings and the building of social and cultural centres, and the increased public funds appropriated for the development of education, culture, health services, children's and young persons' welfare and sport. Public expenditure for these purposes (excluding investment expenditure) was more than 12 per cent higher than in 1953.

The development of education continued in 1954.

The number of children in kindergartens showed an increase of 8 per cent as compared with 1953. More than 540,000 children attended holiday camps, training camps and day camps.

The percentage of pupils attending full seven-year elementary schools increased to approximately 89 per cent of the total number of pupils at elementary schools. The number of pupils attending full seven-year elementary schools in rural areas increased by over 3 per cent as compared with 1953. The number of pupils in general secondary schools rose to 195,000.

Certain difficulties were encountered in carrying out the general education plan, owing to overcrowding of classrooms in elementary schools situated in provincial district capitals and in the larger industrial centres.

The number of pupils in primary vocational schools fell somewhat below the 1953 level, while the number attending technical vocational schools and equivalent institutions showed an increase. A new course, on

<sup>1</sup> Text received through the courtesy of the Permanent Mission of Poland to the United Nations. Translation from the Polish text by the United Nations Secretariat.



the mechanization of agriculture, was introduced in primary vocational schools and was attended by 13,100 pupils. There was a substantial increase in the number of pupils at primary vocational schools attending crafts courses, the figure rising by 42 per cent in comparison with 1953. The number of students enrolled in all annual classes, including those taking correspondence courses or attending evening classes, rose by some 11,000 as compared with 1953—i.e., an increase of 8 per cent, including a rise of some 15 per cent in the number of students taking agricultural courses. The number of persons availing themselves of correspondence courses increased by 20 per cent by comparison with 1953.

The health services continued to develop in 1954. The average number of beds in hospitals, infirmaries and maternity homes exceeded the average figure for 1953 by some 10,000. The average number of beds in maternity homes in rural areas rose by more than 11 per cent as compared with 1953, while the number of beds in infirmaries attached to places of work showed a 33 per cent increase. The hours of work performed by doctors and dentists in public practice increased by 20 per cent. Fifty-two additional sanitary and epidemiological centres were organized during the year.

The number of places in creches rose in 1954 by 16 per cent as compared with 1953. However, the target figure for places in creches was not attained, owing to the under-fulfilment of the plan for new creches to be brought into service during the year.

The number of workers taking part in organized leisure activities reached 427,000, which represented a 4 per cent increase as compared with 1953. The number of volumes in general public libraries rose by 12 per cent as compared with 1953. The number of books and pamphlets published during the year increased by 12 per cent as compared with 1953, with a 10 per cent increase in the number of copies.

The total printing of periodicals increased by 5 per cent as compared with 1953.

The number of urban and rural cinemas rose by 9 per cent in 1954.

One hundred and eighty-five permanent and semi-permanent rural cinemas were opened. At the end of 1954 a total of 1,612 permanent, semi-permanent and mobile cinemas were in operation in rural areas. Audiences in urban and rural cinemas increased by 9 per cent.

The number of performances and concerts in theatres and musical institutions increased by a total of 8 per cent as compared with 1953, with audiences increasing by the same percentage.

There was a further improvement in public services and living conditions in towns and workers' settlements.

There was a 3 per cent increase in the total length of the water-mains system as compared with 1953, with an identical increase in the sewerage system. There was an 8 per cent increase in the public supply of water from the water-mains system. In some provinces, however, the water supply continued to raise difficulties.

The number of passengers carried by the urban public transport system increased by 6 per cent as compared with 1953. The total length of tramway routes increased by some 3 per cent.

The total area of urban parks and playgrounds rose by 3 per cent as compared with 1953.

In conformity with the decisions of the Second Party Congress, funds allocated for housing repairs were substantially increased. In the municipal economy sector, expenditure on housing repairs capital increased by more than 50 per cent as compared with 1953. Capital repairs were carried out in some 35,500 buildings.

## DECREE OF THE COUNCIL OF STATE CONCERNING THE GENERAL RETIREMENT SYSTEM FOR EMPLOYEES AND THEIR DEPENDANTS

of 25 June 1954

### SUMMARY<sup>1</sup>

This decree makes the general retirement system established by it a compulsory form of social security for employees and their dependants. The general retirement system is to be financed out of state funds collected through contributions from the employing organizations, there being no deductions of any kind from wages due to employees.

The general retirement system provides benefits to employees, for old age or disability, and to the families of employees and of retired employees, in the event of loss of the breadwinner.

The decree lists as "employees" the following categories of persons:

- (1) Manual and intellectual workers employed pursuant to a contract of service, an appointment, or a direction of labour order;

<sup>1</sup> The decree appears as item 116 in *Dziennik Ustaw Polskiej Rzeczypospolitej Ludowej* No. 30, of 30 June 1954. Summary prepared by the Secretariat of the United Nations from the text of the decree kindly furnished by the Permanent Mission of Poland to the United Nations.

- (2) Persons performing a function of their choice, provided that they derive a livelihood therefrom;
- (3) Persons attending vocational training centres;
- (4) Persons attending party or trade union schools who were employed immediately before beginning their courses;
- (5) Persons performing work in the course of an apprenticeship;
- (6) Small independent farmers who derive their livelihood from their farms.

The family of the employee, for the purposes of the decree, consists of the following persons:

- (1) Spouses and parents who, at the time of the breadwinner's death or within ten months thereafter, are or become:
  - (a) Invalids; or
  - (b) Aged 65 if men or 55 if women; or
  - (c) Responsible for the upbringing of at least one child, grandchild, brother or sister of the deceased, the charge being under the age of seven;
- (2) Single children, grandchildren, brothers or sisters who:
  - (a) Are under the age of sixteen or, if attending school, under the age of eighteen; or
  - (b) Regardless of age, are invalids and became such invalids while under the age specified in (a) above; and
  - (c) Do not otherwise draw from state funds an amount sufficient to cover the cost of their maintenance and education.

Benefits under the general retirement system include old-age pensions, disability pensions, pensions for dependants, supplementary pensions, funeral allowances, medical and maternity assistance, provision of prosthetic appliances, vocational training and placement in homes for retired persons.

Where any privately owned enterprise employs the spouse or a close relative of the person on whose behalf the enterprise is operated, such spouse or relative shall only be entitled to the benefits payable pursuant to the decree in the event of accident or occupational disease if:

- (a) The contract of employment or apprenticeship is contained in a duly authenticated document; and
- (b) The worker concerned does not maintain a common household with the person on whose behalf the enterprise is operated.

Foreigners employed in foreign missions or offices of international organizations are excluded from the operation of the decree.

## DECREE OF THE COUNCIL OF STATE AMENDING THE DECREE OF 25 JUNE 1954 CONCERNING THE GENERAL RETIREMENT SYSTEM FOR EMPLOYEES AND THEIR DEPENDANTS

of 27 November 1954

### SUMMARY<sup>1</sup>

This decree amended the earlier decree by adding a second paragraph to its article 89. This article had been open to the misinterpretation that it enabled certain categories of persons to claim pensions without ceasing employment. The new paragraph stated expressly that entitlement to pensions is subject to cessation of employment.

<sup>1</sup> The decree appears as item 268 in *Dziennik Ustaw Polskiej Rzeczypospolitej Ludowej* No. 54, of 14 December 1954. Summary prepared by the Secretariat of the United Nations from the text of the decree kindly furnished by the Permanent Mission of Poland to the United Nations.

## DECREE OF THE COUNCIL OF STATE CONCERNING BENEFITS FOR DISABLED MEMBERS OF THE ARMED FORCES AND THEIR DEPENDANTS

of 14 August 1954

### SUMMARY<sup>1</sup>

This decree entitles members of the armed forces of the Polish People's Republic, in the case of dis-

ability, and their families, in the case of their death, to benefits out of state funds.

<sup>1</sup> The decree appears as item 159 in *Dziennik Ustaw Polskiej Rzeczypospolitej Ludowej* No. 37, of 25 August 1954. Summary prepared by the Secretariat of the United Nations from the text of the decree kindly furnished by the Permanent Mission of Poland to the United Nations.

The benefits provided for members of the armed forces include monetary benefits and benefits in kind. The monetary benefits are disability pensions, supplementary pensions and funeral allowances. The

benefits in kind are medical assistance, provision of prosthetic appliances and orthopaedic apparatus, vocational training, provision of work and placement in homes for retired persons.

The benefits for dependants similarly include monetary benefits and benefits in kind. The former consist of pensions, supplementary pensions, funeral allowances and lump payments. The latter consist of medical assistance, the provision of prosthetic appliances and orthopaedic apparatus and placement in homes for retired persons.

Military disabled are defined as members of the armed forces who, while on active military service, have become incapable of work as a result of illness or disability and have been included in one of the three categories of invalidity.

Members of the armed forces who have been discharged from the service during their first six weeks because of illness which had unquestionably arisen before joining and did not become worse as a result of such service are not entitled to the benefits conferred by the decree. Such persons are entitled to the benefits provided by the decree concerning the general retirement system for employees and their families, if

they fulfil the conditions required for entitlement to benefits pursuant to that decree.

The following three categories of invalidity are established:

- (i) Inability to perform work of any kind, permanent care being required;
- (ii) Inability to perform work of any kind, permanent care not being required;
- (iii) Inability to perform regular work within the person's profession under the usual conditions existing in that profession, but accompanied by ability to perform temporary or part-time work, or to perform work in another profession requiring lower skills.

Classification into one of the above categories is made by the medical boards established by the decree concerning the general retirement system for employees and their dependants, pursuant to rules and procedures determined by that decree.

Special provisions are made concerning the retirement benefits of officers and non-commissioned officers in the career service.

## DECREE OF THE COUNCIL OF STATE CONCERNING THE PENSION SCHEME FOR GENERALS (ADMIRALS), REGULAR OFFICERS AND NON-COMMISSIONED OFFICERS AND THEIR DEPENDANTS

of 18 September 1954

### SUMMARY<sup>1</sup>

This decree provides for the payment of service and disability pensions to retired or discharged officers and non-commissioned officers of the regular armed forces. In the event of the death of such a serviceman, a pension is payable to his dependants. Time-expired officers and non-commissioned officers are entitled to receive, *inter alia*, a basic long-service pension, a funeral allowance, medical assistance, living quarters, a plot of land and assistance with its development. Disability benefits include, besides a basic disability pension and allowances, medical assistance, prosthetic appliances, vocational training and placement in homes for retired persons. A deceased serviceman's dependants are entitled to a cash pension and allowances, a lump-sum payment, medical and maternity assistance, prosthetic appliances and placement in a home on retirement.

Officers and non-commissioned officers who have been dishonourably discharged are not entitled to service benefits.

The basic long-service pension is payable after twenty-five years' service, or after fifteen years if the serviceman has attained the age of sixty. The minimum pension is 50 per cent of the serviceman's final remuneration and, depending on length of service, may be as high as 85 per cent. General and flag officers always receive 85 per cent. The holders of certain high decorations receive a special increase.

Disability pensions and benefits are payable, in accordance with principles similar to those embodied in the decree concerning benefits for disabled members of the armed forces and their dependants of 14 August 1954, to officers and non-commissioned officers who, while on active military service or within a period of three months after release, have become incapable of work as a result of illness or injury.

The members of a deceased officer's or non-commissioned officer's family entitled to benefits are: his spouse, children, grandchildren, brothers, sisters and parents who were dependent on the deceased.

The decree has to be read in conjunction with the decree concerning the general retirement system for employees and their dependants of 25 June 1954.

<sup>1</sup> The decree appears as item 181 in *Dziennik Ustaw Polskiej Rzeczypospolitej Ludowej* No. 41, of 22 September 1954. Summary prepared by the Secretariat of the United Nations from the text of the decree kindly furnished by the Permanent Mission of Poland to the United Nations.

## RATIFICATION OF INTERNATIONAL INSTRUMENTS

On 31 March 1954, the Polish People's Republic deposited its instrument of ratification of the Convention on the Political Rights of Women, adopted by the General Assembly of the United Nations on 20 December 1952.<sup>1</sup>

During 1954, the Polish People's Republic also ratified eight Conventions adopted by the General Conference of the International Labour Organisation. On 13 April 1954 its ratification of the following International Labour Conventions was registered:

Food and Catering (Ships' Crews) Convention, 1946

Certification of Ships' Cooks Convention, 1946  
 Medical Examination (Seafarers) Convention, 1946  
 Certification of Able Seamen Convention, 1946  
 Accommodation of Crews Convention (Revised), 1949

On 25 October 1954, ratification of the following further International Labour Conventions was registered:

Protection of Wages Convention, 1949  
 Fee-Charging Employment Agencies Convention (Revised), 1949  
 Equal Remuneration Convention, 1951

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<sup>1</sup> See *Yearbook on Human Rights for 1952*, pp. 375-376.

# PORTUGAL

## NOTE<sup>1</sup>

1. Legislative decree No. 39688, of 5 June 1954 (*Diário do Governo*, Series I, No. 122, of 5 June 1954), amended the Penal Code. Extracts from the legislative decree appear below. So also do the texts of or extracts from certain enactments governing the overseas provinces of Portugal.<sup>2</sup>

2. Legislative decree No. 39660, of 20 May 1954 (*Diário do Governo*, Series I, No. 110, of 20 May 1954), supplemented the provisions regulating the exercise of the right of association. The full text appears in

<sup>1</sup> Texts and information received through the courtesy of the Portuguese Embassy, Washington, D.C.

<sup>2</sup> In certain previous issues of the *Yearbook on Human Rights*, texts relating to the overseas territories of Portugal appeared in Part II A, dealing with Non-Self-Governing Territories. On 8 November 1956, the Government of Portugal stated that Portugal did not administer territories of the category indicated by Article 73 of the Charter of the United Nations. (Concerning Article 73, see below, p. 416.)

English and French translation in the *Legislative Series* of the International Labour Office, 1945—Por. 1. Article 1 of the legislative decree reads:

“1. It shall be lawful for all citizens in possession of their civic and political rights to promote the formation of any association which is not a secret society and whose objects do not involve infringement of the rights of non-members or public policy, or any injury to the interests of society or the principles upon which the moral, economic and social order of the Nation is founded.”

3. Legislative decree No. 40011, of 30 December 1954 (*Diário do Governo*, Series I, No. 291, of 30 December 1954), extends until 31 December 1956 the National Campaign for Adult Education established in pursuance of article 23 of legislative decree No. 38,968 of 27 October 1952.

## LEGISLATIVE DECREE No. 39688 TO AMEND THE PENAL CODE of 5 June 1954<sup>1</sup>

...

*Art. 2.* Articles 54, ... 60, 61, ... 70, ... 113, ... of the Penal Code shall be amended to read as follows:

“*Art. 54.* The prevention and punishment of offences shall be ensured by means of penalties and measures of security. No penalty or measure of security may be applied unless prescribed by law.

“The various penalties and measures of security shall be those set out in the following articles:

...

“*Art. 60.* ‘Suspension of political rights’ means inability to participate in any way in the exercise or establishment of public authority and inability to hold public office for a period of fifteen or twenty years.

“*Art. 61.* ‘Temporary suspension of political rights’ means debarment from the exercise of some or all political rights for a period of not less than three nor more than twelve years.

...

<sup>1</sup> Text in *Diário do Governo*, Series I, No. 122, of 5 June 1954, made available through the courtesy of the Portuguese Embassy, Washington, D.C. Translation by the United Nations Secretariat.

“*Art. 70.* Measures of security shall be as follows:

...

“5. Deprivation of the right to carry on an occupation.

...

“(5). Deprivation of the right to carry on an occupation or trade or engage in industry or commerce debars the sentenced person from carrying on any occupation or trade or engaging in any form of industry or commerce for which a special licence or an official authorization is required. Such deprivation shall be ordered by the court whenever a sentence of imprisonment or a sentence of detention for a term of more than six months is imposed for an offence entailing fraud committed in connexion with the exercise of an occupation or trade or the conduct of industry or commerce, in a proper or improper manner, or in connexion with a serious breach of the duties relevant thereto.

The period of such deprivation shall be specified in the sentence and shall not be less than one month nor more than ten years. If the offence committed is punishable by detention, the period of deprivation shall not exceed two years.

The period of deprivation shall commence on termination of the term of imprisonment or detention. When half of the period of deprivation has elapsed, the court may, if there is conclusive evidence as to the appropriateness of terminating the deprivation, replace the deprivation by a guarantee of good behaviour.

Any person who has under a decision of the court been deprived of the right to carry on an occupation

or trade or to engage in industry or commerce but nevertheless does so shall be punished by detention for a term of not more than one year.

...

"Art. 113. A penalty involving deprivation of liberty imposed on a woman who is pregnant or who has children under three years of age shall be carried out with such modifications as are consistent with the condition of the woman or the interests of the children."

## LEGISLATIVE DECREE No. 39666 ON THE STATUS OF INDIGENOUS PERSONS OF PORTUGUESE NATIONALITY IN THE PROVINCES OF PORTUGUESE GUINEA, ANGOLA AND MOZAMBIQUE

of 20 May 1954<sup>1</sup>

### CHAPTER I.—INDIGENOUS PERSONS OF PORTUGUESE NATIONALITY AND THEIR STATUS

*Art. 1.* In accordance with the Political Constitution,<sup>2</sup> the organic law relating to the Portuguese overseas provinces<sup>3</sup> and the present enactment, the indigenous inhabitants of the provinces of Portuguese Guinea, Angola and Mozambique shall enjoy a special status.

*Sole paragraph.* The status of an indigenous person of Portuguese nationality shall be personal and shall be reflected in whatever Portuguese territory the person possessing it may be in.

*Art. 2.* A person shall be considered to be an indigenous inhabitant of a province aforementioned if he is a member of the negro race or a descendant of a member of that race and was born, or habitually resides, in the province but does not as yet possess the level of education or the personal and social habits which are a condition for the unrestricted application of the public and private law pertaining to Portuguese citizens.

*Sole paragraph.* A person shall likewise be considered to be an indigenous inhabitant of the province if he was born of indigenous parents at a place outside the province to which his parents had temporarily removed.

*Art. 3.* Unless otherwise prescribed by law, indigenous persons shall be governed by the usages and customs pertaining to their respective societies.

(1) Toleration of indigenous usages and customs shall be subject to such limitations as are imposed by

morality, the dictates of humanity and the higher interest of the free exercise of Portuguese sovereignty.

(2) In applying indigenous usages and customs, the authorities shall endeavour, whenever possible, to bring them into conformity with the fundamental principles of public and private Portuguese law, and shall encourage the progressive evolution of indigenous institutions in harmony with those principles.

(3) The extent to which indigenous usages and customs are to be applied shall be determined by the stage of development reached by the indigenous person concerned, his moral character and his occupational attainments and by whether he is estranged from, or still integrated in, tribal society.

*Art. 4.* The State shall endeavour by every means to improve, both materially and morally, the living conditions of the indigenous inhabitants, to develop their natural aptitudes and abilities, and, in general, to educate them by providing them with instruction and by transforming their primitive usages and customs, directing their activities into useful channels and actively integrating them into the community by giving them access to citizenship.

*Art. 5.* The State shall provide all assistance necessary for improving the health and increasing the life span of the indigenous peoples and for introducing new production techniques into the indigenous economy.

*Art. 6.* The instruction especially intended for indigenous persons shall have as its general purpose the moral, civic, intellectual and physical education prescribed by law and the imparting of work habits and work skills, as determined by the needs of both sexes and by social and regional economic conditions.

(1) The instruction referred to in this article shall always be directed towards inculcating a knowledge of the Portuguese language, but the use of the ver-

<sup>1</sup> Text in *Diário do Governo*, Series I, No. 110, of 20 May 1954, received through the courtesy of the Portuguese Embassy, Washington, D.C. Translation by the United Nations Secretariat.

<sup>2</sup> See *Yearbook on Human Rights for 1951*, p. 301.

<sup>3</sup> See *Yearbook on Human Rights for 1953*, pp. 327-329.

gnacular languages may be authorized as a means to that end.

(2) Those indigenous persons who have received "adaptation" training or who demonstrate, in the manner prescribed by law, that they do not require such training, shall be assured of admission to public schools under the conditions applicable to other Portuguese nationals.

## CHAPTER II.—LEGAL STATUS OF INDIGENOUS PERSONS

### PART I

...

*Art. 23.* Indigenous persons shall not be granted political rights with respect to non-indigenous institutions.

*Sole paragraph.* Representatives of the indigenous inhabitants, chosen in the manner prescribed by law, shall sit in the legislative or government councils of each province.

*Art. 24.* Indigenous persons shall have the right of petition and complaint, which they may exercise at all administrative levels and in particular with regard to administrators of indigenous affairs and administrative inspectors.

*Sole paragraph.* It shall be a disciplinary offence for any overseas official to attempt any obstruction or reprisal with regard to the exercise by indigenous persons of the right conferred by this article.

### PART II

*Art. 25.* In the absence of explicit legislative provisions concerning indigenous persons, the provisions of ordinary criminal law shall apply.

*Sole paragraph.* A judge, when assessing an offender's conduct and imposing penalty, shall in every instance take into consideration the influence exerted on the said offender and his actions by indigenous social conditions.

...

### PART III

#### Sub-part I

...

*Art. 30.* Baptized indigenous persons may be married according to the provisions of canon law by a ministry of the Roman Catholic Church if they satisfy the requirements of the civil law.

...

*Art. 31.* The ownership of movable property shall be acknowledged and protected in accordance with the general provisions of law.

#### Sub-part II

*Art. 32.* The State shall endeavour to teach the indigenous peoples that work is an indispensable element of progress, but the authorities may not

impose labour except in the cases explicitly prescribed by law.

*Art. 33.* Indigenous persons may freely choose the work they wish to perform, whether for their own or for another's account, on their own land or on land allotted to them for this purpose.

*Art. 34.* The performance of work for non-indigenous persons shall be subject to freedom of contract and to the right to fair pay and assistance, and shall be supervised by the State through competent authorities.

#### Sub-part III

*Art. 35.* Indigenous persons living in a tribal organization shall be assured of the joint use and enjoyment, in the manner prescribed by customary law, of the land necessary for their settlement and for the growing of their crops and the grazing of their cattle.

*Sole paragraph.* Occupation of land as provided in this article does not confer individual rights of ownership and shall be governed, as between indigenous persons, by the relevant usages and customs.

*Art. 36.* No grants of land may be made to non-indigenous persons unless the position of the indigenous inhabitants established thereon have been protected as prescribed by law.

*Art. 37.* The State shall recognize and foster individual rights of indigenous persons over rural and urban properties.

Indigenous persons who have opted for ordinary law in the matter of immovable property may acquire rights of ownership and other rights *in rem* over immovable property through inheritance, legacy, gift or purchase.

An indigenous person who has not so opted may acquire rights over immovable property subject to the limitations imposed by the following articles.

*Sole paragraph.* Any contract for the purchase of immovable property in which the purchaser is an indigenous person, and any disposal by way of gift, sale or otherwise of immovable property belonging to an indigenous person, where such disposal is in favour of a non-indigenous person, shall be valid only if authorized by the local judge, who shall ascertain that the indigenous persons concerned have the necessary legal capacity and that their interests will not be injured.

...

## CHAPTER III.—TERMINATION OF THE STATUS OF INDIGENOUS PERSON AND ACQUISITION OF CITIZENSHIP

*Art. 56.* A person may relinquish the status of indigenous person and acquire citizenship if he can

prove that he satisfies all the following requirements:

- (a) Is over eighteen years of age;
- (b) Speaks the Portuguese language correctly;
- (c) Is engaged in an occupation, trade or craft from which he derives sufficient income to support himself and the dependent members of his family, or else possesses adequate resources for that purpose;
- (d) Is of good conduct and has attained the level of education and acquired the habits which are a condition for the unrestricted application of the public and private law pertaining to Portuguese citizens;
- (e) Is not on record as having refused to perform military service or as having deserted.

(1) Evidence of compliance with the foregoing requirements shall be furnished in the form prescribed by law, but in the case of items (b), (c), and (d) a certificate from the administrator of the municipality or circumscription in which the indigenous person concerned has been resident for the past three years shall be sufficient.

As to evidence of good conduct, the certificate in

question must be supplemented by an extract from the register of criminal offences showing that the person concerned has never been sentenced to imprisonment and has not been sentenced to detention on more than two occasions.

(2) In case of refusal by an administrator to grant the relevant certificates, an appeal may be lodged with the authorities referred to in article 58 of this legislative decree, who shall render a final decision in the matter after ordering such investigation as they consider appropriate.

(3) For the purposes of granting citizenship, a notation of refusal to perform military service shall be deemed to be without effect if military service is subsequently performed.

*Art. 57.* An indigenous woman married to a person who acquires citizenship in pursuance of the preceding article and any legitimate or legitimated children under eighteen years of age living with the father at the date when citizenship was acquired may also acquire citizenship if they satisfy the requirements set out in items (b) and (d) of article 56.

...

## ORDER No. 14911 EXTENDING TO THE OVERSEAS PROVINCES, WITH SOME AMENDMENTS, LEGISLATIVE DECREE No. 39660 ON THE EXERCISE OF THE RIGHT OF ASSOCIATION

of 1 June 1954<sup>1</sup>

1. Legislative decree No. 39660 of 20 May 1954<sup>2</sup> is hereby declared to be in force in the overseas provinces and to that end shall be published in the official gazettes of all the said provinces.

2. For the purposes of article 2 of the said legislative decree, the words "civil governor for the district" shall be replaced by the words "governor of the overseas province" and the words "Minister of the Interior" by the words "Minister of Overseas Provinces", and the said article shall be deemed to be worded as follows:

<sup>1</sup> Text in *Diário do Governo*, Series I, No. 118, of 1 June 1954, received through the courtesy of the Portuguese Embassy, Washington, D.C. Translation by the United Nations Secretariat.

<sup>2</sup> See above, p. 235.

"*Art. 2.* The formation of an association and its existence in law shall be conditional on the rules being approved by the governor of the overseas province in which the association's registered office is situated or, where the association's activities extend beyond one province, by the Minister of Overseas Provinces."

3. The powers conferred by paragraph (1) of article 5 of the said legislative decree upon the Minister shall be exercised by the Minister of Overseas Provinces or by the governor of the overseas province in which the association's registered office is situated, according to whether or not the association's activities extend beyond the province in question.

To be published in the official gazettes of all the overseas provinces.



DECREE NO. 39606 PROHIBITING PROSTITUTION  
IN ALL THE OVERSEAS PROVINCES  
of 9 April 1954<sup>1</sup>

*Art. 1.* Prostitution is hereby prohibited in all the Portuguese overseas provinces.

*Art. 2.* Any woman engaging in prostitution shall be punished by detention for a term of not more than six months.

*Art. 3.* Houses used for purposes of prostitution shall be closed by the administrative authorities without any judicial process being required.

*Art. 4.* A person who derives profit from the exploitation of a house of prostitution shall be punished by detention for a term of not more than one year, unless a more severe penalty is otherwise prescribed for the acts committed by him.

*Art. 5.* Unless a more severe penalty otherwise applies, a person who habitually incites to, encourages or assists the commission of acts of prostitution shall be punished by detention for a term of not more than six months.

*Art. 6.* The governors of the overseas provinces, with the aim of suppressing those practices which, in accordance with international conventions, are defined as traffic in women and children, shall continue

to take the steps necessary for strict supervision over the immigration and emigration of women and female children.

*Art. 7.* Any person who is aware that he is suffering from a venereal disease in the contagious stage and transmits such disease shall be punished by detention for a term of not less than six months nor more than two years and by the corresponding fine, without prejudice to his liability for damages.

(1) The penalty of imprisonment may be replaced by internment for the same length of time in an institution for vocational rehabilitation, where such an institution exists, and shall be doubled if the infected person is under eighteen years of age.

(2) Criminal proceedings under this article shall be taken only if charges are brought by the injured party or by his parents or guardians.

(3) All judicial proceedings shall be barred after a lapse of six months from the date of the offence.

(4) Any person falsely charging another person with having infected him with venereal disease shall be punished by detention for a term of not less than six months not more than two years and by the corresponding fine.

Publication and enforcement of the foregoing is hereby ordered.

<sup>1</sup> Text in *Diário do Governo*, Series I, No. 75, of 9 April 1954, received through the courtesy of the Portuguese Embassy, Washington, D.C. Translation by the United Nations Secretariat.

# FEDERATION OF RHODESIA AND NYASALAND

## NOTE<sup>1</sup>

### 1. *Repeal of the Civil Disabilities Act, 1942, of Southern Rhodesia*

The Civil Disabilities (Repeal) Act, 1953 (No. 14, 1953) repeals the Civil Disabilities Act, 1942 (No. 12, 1942), which imposed certain disabilities upon persons who were guilty of treasonable or seditious practices, or who deserted or were cashiered or discharged with ignominy from the armed forces of the colony or other of His Majesty's forces, or who failed to take an oath of allegiance, or who evaded or refused to render service in such forces.

Section 2(1) of the Act of 1953 reads as follows: "The Civil Disabilities Act, 1942, is hereby repealed with effect from the 2nd June, 1953, and accordingly any civil disability order made and in force thereunder is hereby cancelled with effect from the said date."

Section 3 of the Act of 1942 empowered the High Court to make an order of civil disability on application by the Minister of Defence. The persons against whom such an order might be made were defined in section 4 as follows:

"4. The following persons shall be liable to have an order made against them—that is to say, any person who—

"(a) Has been convicted of treason, sedition or any offence of which intent to help the enemy or to impede the naval, military or air operations of the armed forces of the colony or other of His Majesty's forces is an element; or

"(b) Has been guilty of desertion from the armed forces of the colony or other of His Majesty's forces; or

"(c) Has been cashiered or discharged with ignominy from the armed forces of the colony or other of His Majesty's forces by sentence of any competent naval, military or air force court; or

"(d) Has failed or neglected to take an oath of allegiance as prescribed under this Act when called upon to do so in terms of section *five* of this Act:

"Provided that, in any case where the reason for the respondent's refusal to take the oath of allegiance as prescribed is a conscientious one based upon religious conviction, the order shall not be made if the respondent satisfies the court that he is prepared to take an oath of allegiance to His Majesty and is prepared to render true and loyal service in a non-

combatant capacity in any of the armed forces of the colony; or

"(e) Being liable to render service in the armed forces of the Colony in terms of the Defence Act (*Chapter 111*), the National Service (Armed Forces) Act, 1940, or any other law, has deliberately refused to render such service when called upon to do so by a competent authority:

"Provided that, in any case where the reason for the respondent's refusal to render service is a conscientious one based upon religious conviction, the order shall not be made if the respondent satisfies the court that he was and is prepared to serve in such armed forces in a non-combatant capacity; or

"(f) Being liable under the National Service (Armed Forces) Act, 1940, as amended, to be called up for service, has failed to register himself in terms of section 5 of that Act; or

"(g) Having been born in the colony, has left or remained beyond the borders of the colony for the purpose of evading service in the armed forces of the colony."

The automatic effects of every order made were defined in section 6 of the Act:

"6. Every order made against any person under this Act shall, from the date of making of such order and notwithstanding the provisions of any other law, have the following effects upon that person—

"(a) He shall be disqualified from being registered as a voter and from voting at any election under the Electoral (Act *chapter 2*), and his name shall be included in the return sent by the registrar of the court to the Chief Registering Officer in terms of section 31 of the said Act as though he had been declared so disqualified under the powers conferred by the said Act;

"(b) He shall be disqualified from being enrolled on the voters' list and from voting at any election for any municipal council, town management board or road council and from being elected or sitting as a member of any such council or board;

"(c) He shall be disqualified from holding any office or employment under the Government of the colony and, if he holds any such office or employment, shall be deemed to have forfeited such office or employment from the date of making of the order, and shall thereupon cease to perform his duties or receive his salary:

<sup>1</sup> Note prepared on the basis of texts and information kindly furnished by the Government of Southern Rhodesia.

"Provided that the Minister may authorize the employment of such person in government service;

(d) He shall not be entitled to receive, and shall not be given, any government assistance by way of loan or the acquisition of land upon special terms."

Section 7 of the Act set out certain further disabilities which the High Court might add to an order—disqualification from holding licences under the Licence and Stamp Act, the Mines and Minerals Act and the Liquor Act, and prohibition of the purchase, possession, carrying or use of firearms or ammunition or the placing of conditions on such purchase, possession, carrying or use.

Section 8 of the Act provided, as follows:

"8. An order made against any person shall have upon the wife of such person in like manner and in all respects the same effects as it has upon such person himself, unless she is bona fide living apart from him under notarial deed or judicial order of separation or unless the court, being satisfied on the hearing of the application or on special application made thereafter that there are special circumstances justifying such a course, has declared that the order shall not apply to the wife of such person."

## 2. *Amendment of the Peace Preservation Act (chapter 117) of Southern Rhodesia*

The Peace Preservation Act (chapter 117) was amended by the Peace Preservation Amendment Act, 1953 (No. 62, 1953), to permit the Governor to take

prompt action designed to maintain the functioning of essential services in Southern Rhodesia. Section 6 of the Act of 1953 amends the principal Act by the addition of a section 8, reading in part as follows:

"8. (1) Whenever there is any actual or threatened interference with or stoppage of or reduction in the output or efficiency of any essential services caused by strikes, lock-outs, desertion of labour forces, active or passive resistance on the part of any person or group of persons or any similar cause, or whenever the peace, order and tranquillity of the colony is threatened or disturbed, the Governor may make such regulations as he may deem necessary—

"(a) To ensure the safety of the public or any section of the public or to maintain peace, order and tranquillity in the colony;

(b) To ensure the carrying on and control of essential services and the control, distribution or rationing of any commodity essential to the life of the community."

"Essential services" are said by section 3 of the Act of 1953 to include "coal mining, railways, omnibus services, road motor services, air services, power stations, postal services, sewerage services, hospitals, schools and services relating to water supplies and the production, supply, delivery or distribution of food and coal."<sup>1</sup>

<sup>1</sup> The Peace Preservation Act (Chapter 117) and the Peace Preservation Amendment Act, 1953 were both repealed by the Public Order Act, 1955 of Southern Rhodesia.

## ROMANIA

### REPORT OF THE CENTRAL STATISTICAL BOARD OF THE COUNCIL OF MINISTERS OF THE ROMANIAN PEOPLE'S REPUBLIC ON THE FULFIL- MENT OF THE STATE PLAN IN 1954

#### EXTRACT FROM CHAPTER VII

##### RISE IN THE MATERIAL AND CULTURAL STANDARD OF LIVING OF THE WORKERS<sup>1</sup>

In 1954, the material conditions of life continued to improve and the cultural level of the workers continued to rise.

During this period the funds allocated for the wages of workers and employees were increased by 10.5 per cent. The income tax payable by workers and employees was 23 per cent less than in 1953, which meant in effect an increase in their income.

At the same time as the system of food distribution based on ration cards was abolished, the wages of workers in the first, second and third grades, and administrative employees in the first grade, were increased.

As a result of the 8.1 per cent increase in average income, the reduction in income tax and the reductions in the prices of certain articles of general consumption and of agricultural food products sold on the market, real wages of workers and employees were higher than in 1953.

Through the state social security system wage-earners received over 300 million lei more in cash allocations and retirement pensions than in 1953. They enjoyed free medical assistance, education free of charge or at reduced fees, and holidays at health resorts, to which more than 450,000 wage-earners and members of their families were sent.

Large quantities of foodstuffs and considerable sums of money were distributed to collective farmers by the collective agricultural undertakings in payment for days worked, while at the same time the farmers obtained a good income from their individual farms.

In 1954 the income of collective farmers was 27 per cent greater than in 1953.

The consumption of agricultural products on the farms increased in the case of meat, fats, maize, vegetables and other products, while purchases of clothing, shoes and household articles were higher than in 1953.

One result of the increased income of the urban and rural population was that total savings fund deposits were 56 per cent higher at the end of 1954 than at the end of 1953, while the number of depositors increased by 18.2 per cent.

In 1954 the funds allocated to education, culture, public health, physical culture and sports, social assistance, state family allowances, pensions and social security amounted to more than 5.8 thousand million lei, or 7.8 per cent more than in 1953.

Education for workers without interruption of production was increased, and the first night schools providing a general education for young people in the towns and the country were set up. The purpose of these schools is to extend the educational system and enable the young workers in the towns and villages to attend courses at institutions situated close to their place of work.

In 1954 over 42 million copies of more than 3,000 books and pamphlets were published, a considerable number of them in the languages of national minorities.

The circulation of newspapers and periodicals exceeded 730 million copies.

New scientific, literary and artistic works were published, and large editions of Romanian and world classics were printed.

New units were added to the network of cinemas and the regional film undertakings were provided with eighty mobile cinema units to serve the country districts.

The total number of subscribers to the radio and the radio redistribution system is now over 917,000, or 26.4 per cent more than at the end of 1953. The total number of subscriptions to the radio redistribution system exceeds 376,000; about 152,000 of these were taken out in 1954.

The system of protection of the worker's health was extended by the establishment of new hospitals, dispensaries, and sanatoria, and the enlargement of some of the hospitals. At the same time the numbers of doctors and health personnel increased. Eighty-nine clinics were set up in conjunction with large undertakings.

<sup>1</sup> Romanian text in *Schiteia* No. 3198, of 1 February 1955. Translation by the United Nations Secretariat of a French translation received through the courtesy of the Romanian Legation, Washington, D.C.

Maternity and child welfare was extended, new maternity homes, paediatric dispensaries, creches and kindergartens being established.

The network of pharmacies and pharmaceutical posts was further extended, and further improvements were made in the provision of medicines and sanitary supplies, especially following the reduction in the price of medicines. In 1954 the production of medicines and

medical instruments was 41.2 per cent higher than in 1953.

As a result of the improvements in the standard of living of the people and of the steps taken in the field of public health, the mortality rate for the country has decreased—from 19.1 per thousand in 1938 to 11.4 per thousand in 1954—while the infant mortality rate has fallen from 17.9 per cent in 1938 to 8.9 per cent in 1954.

## FAMILY CODE

### SUMMARY<sup>1</sup>

The Family Code lays down regulations in regard to marriage (title I), parenthood (title II), and the protection of persons partially or totally without legal capacity, and other persons (title III).

In the Romanian People's Republic the State protects marriage and the family and defends the interests of the mother and the child. Marriage by free consent of the spouses is the basis of family life (art. 1).

Family relationships are based on the mutual esteem and affection existing among family members and the duty incumbent upon them to give one another moral and material assistance (art. 2).

There is complete equality between man and wife in regard to marriage and family relationships (arts. 25, 26, 27 and 35). There is no longer any discrimination between children according to whether they are born in wedlock or out of wedlock (art. 63). Adoption is organized as an institution functioning solely in the interests of the adopted child (arts. 66, 75 and 80).

The basis of the relationship between parents and children is the principle of parental rights; these rights are exercised by the two parents and are exercised solely in the interests of the child (art. 97).

All inequality between the sexes in respect of capacity to act as guardian is abolished.

Guardianship is exercised solely in the interests of the minor (art. 114).

Article 25 provides: "In marriage the husband and wife have equal rights and obligations."

*Art. 26:* "All decisions respecting the marriage shall be made by agreement between the spouses."

*Art. 27:* "At the conclusion of the marriage ceremony the married couple shall notify the registrar of the name they have agreed to adopt during the marriage."

"The spouses may retain their former names, adopt the name of either spouse, or combine their names."

*Art. 35:* "The spouses shall administer and use their joint property in common, and dispose of it in the same manner."

*Art. 63:* "A child born out of wedlock, where paternity has been established either by acknowledgement or by judicial decision, shall have the same legal position in relation to his parent and his parent's family as a child born in wedlock."

*Art. 66:* "Adoption shall take place solely in the interests of the adopted child."

*Art. 75:* "Adoption shall be effective from the date of its approval. From that date the adopted child shall have the same rights and obligations with respect to the person adopting him as the child born in wedlock has to his own parents; the descendants of an adopted child shall have the same rights and obligations with respect to the person adopting him as the descendants of a child born in wedlock have with respect to his ascendants."

"An adopted child and his descendants shall retain all the rights and obligations deriving from parentage with respect to his natural parents and their families."

*Art. 80:* "An adoption concluded without the consent of the parents of the adopted child may be annulled by the courts at the request of either of the parents if it is in the interest of the child that he should be returned to them. If the adopted child has reached the age of ten years his consent shall also be sought."

<sup>1</sup> Code published in the Official Gazette (*Buletinul Oficial*) No. 1/4, January 1954. Translation into English by the United Nations Secretariat of a summary in French received through the courtesy of the Romanian Legation, Washington, D.C.

*Art. 97:* "Both parents have the same rights and obligations with respect to their minor children, irrespective of whether the children were born in wedlock or out of wedlock or are adopted.

"They shall exercise their parental rights solely in the interests of the children."

*Art. 114:* "Guardianship shall be exercised solely in the interests of the minor."

# DECISION No. 809 OF 31 MAY 1954 OF THE COUNCIL OF MINISTERS OF THE ROMANIAN PEOPLE'S REPUBLIC AND THE CENTRAL COMMITTEE OF THE ROMANIAN WORKERS' PARTY CONCERNING THE PROTECTION OF CHILDREN WITHOUT PARENTS OR DEPRIVED OF FAMILY LIFE

## SUMMARY<sup>1</sup>

By this decision the Council of Ministers of the Romanian People's Republic and the Central Committee of the Romanian Workers' Party adopted provisions concerning the protection of certain categories of children—namely, orphans or children one of whose parents is dead, if the children cannot be supported; children deprived of paternal supervision for one reason or another; children suffering from infirmities; children

whose physical, moral or mental development will be endangered if they remain in the paternal home. Children in these categories are brought up by the State in institutions of various kinds, where medical treatment is provided free of charge under the supervision of doctors and nurses.

The competent ministries provide education for all children of school age brought up in these institutions and pass them on to vocational schools and courses when they reach the age of fourteen. Pupils who do well in school are sent to institutions of secondary, technical and higher education. The children are returned to their families when the situation of the parents improves.

<sup>1</sup> Decision published in the *Collection of Decisions and Provisions of the Council of Ministers of the Romanian People's Republic* No. 32, of 4 June 1954. Summary by the United Nations Secretariat from a French translation received through the courtesy of the Romanian Legation, Washington, D.C.

# LEGISLATIVE DECREE No. 560 OF 24 DECEMBER 1953 CONCERNING FREE MEDICAL TREATMENT AND REGULATIONS FOR THE DISTRIBUTION OF MEDICINES, AS AMENDED BY LEGISLATIVE DECREE No. 208 OF 29 MAY 1954

## SUMMARY<sup>1</sup>

This decree provides for free medical treatment of all employed persons and members of their families, persons belonging to the craftsmen's mutual insurance system and members of their families, retired persons and members of their families, members of collective farms, and members of farmers' associations and their families.

All the employed persons, retired persons and persons belonging to the craftsmen's mutual insurance system, and members of their families, are given the medicines and other supplies needed for free medical treatment in hospitals and clinics.

Children under the age of sixteen, pupils in inter-

mediate schools and vocational schools, technical school pupils, university, etc., students, pregnant women and women in confinement, persons suffering from tuberculosis, venereal disease and malaria, and patients in hospitals for contagious diseases, receive free of charge medical assistance and the medicines necessary for their treatment, whether or not they are hospitalized.

Similarly, free medicines are supplied for the treatment of persons suffering from pellagra, cancer, epilepsy, endemic goitre, diabetes, etc.; those suffering from occupational diseases; and those requiring treatment for rabies.

The medicines and medical supplies needed in connexion with the health and anti-epidemic campaign conducted by the health and anti-epidemic service are also supplied free.

<sup>1</sup> Decree published in the *Official Bulletin of the Grand National Assembly of the Romanian People's Republic* No. 27, of 1 June 1954. Translation by the United Nations Secretariat of a summary in French received through the courtesy of the Romanian Legation, Washington, D.C.

# LEGISLATIVE DECREE No. 438 OF 16 OCTOBER 1954 CONCERNING THE ESTABLISHMENT OF NIGHT SCHOOLS PROVIDING GENERAL EDUCATION FOR YOUNG INDUSTRIAL AND VILLAGE WORKERS

## SUMMARY<sup>1</sup>

During 1954-1955 night schools providing general education for young industrial and village workers were established. Workers of the towns and villages who wish to continue their studies without interruption of production of agricultural work may enrol at these schools. The pupils pay no school fees.

<sup>1</sup> Decree published in the *Official Bulletin of the Grand National Assembly of the Romanian People's Republic* No. 45, of 30 October 1954. Translation by the United Nations Secretariat of a summary in French received through the courtesy of the Romanian Legation, Washington, D.C.

## RATIFICATION OF INTERNATIONAL INSTRUMENTS

1. Legislative decree No. 222, of 9 June 1954, concerns the ratification of the Convention on the Political Rights of Women adopted by the General Assembly of the United Nations on 20 December 1952 and signed by the Romanian People's Republic on 27 April 1954.<sup>1</sup> The Romanian People's Republic ratified the Convention<sup>2</sup> with the following reservations:

### Ad art. VII:

"The Government of the Romanian People's Republic declares its disagreement with the last sentence of article VII, and considers that the juridical effect of a reservation is to make the Convention operative as between the State making the reservation and all other States parties to the Convention, with the exception only of that part thereof to which the reservation relates."

### Ad art. IX:

"The Government of the Romanian People's Republic does not consider itself bound by the provisions of article IX, which provides that disputes between contracting parties concerning the interpretation or application of this convention shall at the request of

any one of the parties to the dispute be referred to the International Court of Justice for decision, and declares that for any dispute to be referred to the International Court of Justice for decision the agreement of all the parties to the dispute shall be necessary in each individual case."

2. Legislative decree No. 482, of 1 December 1954, concerns the accession of the Romanian People's Republic to the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (with final Protocol) adopted by the General Assembly of the United Nations on 2 December 1949.<sup>3</sup> The Romanian People's Republic acceded to the Convention<sup>4</sup> with the following reservation:

"The People's Republic of Romania does not consider itself bound by the provisions of article 22, which provides that disputes between contracting parties concerning the interpretation or application of this convention shall at the request of any one of the parties to the dispute be referred to the International Court of Justice for decision, and declares that for any dispute to be referred to the International Court of Justice for decision the agreement of all the parties to the dispute shall be necessary in each individual case."

<sup>1</sup> Decree published in the *Official Bulletin of the Grand National Assembly of the Romanian People's Republic* No. 28, of 10 June 1954. The text in French translation was received through the courtesy of the Romanian Legation, Washington, D.C.

<sup>2</sup> See *Yearbook on Human Rights for 1952*, pp. 375-376.

<sup>3</sup> The decree was published in the *Official Bulletin of the Grand National Assembly of the Romanian People's Republic* No. 46, of 10 December 1954. The text in French translation was received through the courtesy of the Romanian Legation, Washington, D.C.

<sup>4</sup> See *Yearbook on Human Rights for 1949*, pp. 388-391.

## EL SALVADOR

### LAW ON LEASES GRANTED BY THE URBAN HOUSING INSTITUTE

DECREE No. 1486

of 25 May 1954<sup>1</sup>

*Art. 1.* The present enactment shall regulate the basic conditions of, as well as all legal claims arising from, leases granted by the Urban Housing Institute [Instituto de Vivienda Urbana] with a promise of sale, or purchase and sale, of houses, whether or not the purpose or object of such lease is the establishment of a homestead property [bien de familia].

*Art. 2.* The leases to which this act refers shall be drawn up in accordance with the ordinary law, with the regulations governing the Urban Housing Institute and with such provisions as may be prescribed by the governing board of the Institute.

The Institute may not hand over possession of any dwelling unless it has been allocated by the governing board and unless a lease has previously been drawn up with a promise of sale or purchase and sale, which lease shall specify the rights and duties of the parties concerned.

<sup>1</sup> Spanish text of decree No. 1486 of the Legislative Assembly in *Recopilación de Leyes, 1950—January 1955*, received through the courtesy of Dr. Alejandro Escalante Dimas, Legal Adviser to the Salvadorean Ministry of Culture. Translation by the United Nations Secretariat.

*Art. 3.* The leaseholders or purchasers of dwellings allocated by the Institute under the homestead property [bien de familia] system may not assign their rights or dispose of the real property concerned, or grant mortgages or encumbrances thereon, except in accordance with the relevant legal provisions.

Any instrument or contract infringing the provisions of the preceding paragraph shall be absolutely null and void, without prejudice to the rights of the Institute under the provisions hereinafter contained.

[Article 4 deals with expiration of leases granted by the Institute and article 5 with grounds for dissolution of contracts of purchase and sale.]

...

*Art. 7.* Any lease with a promise of sale or purchase and sale shall be null and void if granted to a person who, at the time of signing such lease, possessed property exceeding in value three times the price of the property allocated under the lease.

[Further provisions deal with the effects of the expiration, dissolution or nullity of the contract and with procedural rules concerning execution of the contract, actions arising from the contract, and ejectment of the tenant or tenants.]

### DECREE No. 37 REGULATING THE APPLICATION OF THE SOCIAL INSURANCE SCHEME

of 10 May 1954<sup>1</sup>

#### CHAPTER I

#### SCOPE OF APPLICATION

*Art. 1.* The social insurance scheme, under the initial programme relating to the first stage of its application, shall embrace workers gainfully employed in the municipalities of San Salvador, Soyapango, Cuscatancingo, Mejicanos, Villa Delgado, Ayutuxtepeque, San Marcos, Nueva San Salvador and Antiguo Cuscatlán.

*Art. 2.* The social security scheme shall not, under the initial programme referred to in the preceding article, apply to any of the following:

- (a) Workers in the service of the State, a municipality or an autonomous government agency;
- (b) Persons in domestic service;
- (c) Workers only sporadically engaged by an employer;
- (d) Workers earning more than 500 colones a month in ordinary wages in the service of a single employer;
- (e) Agricultural workers;
- (f) Workers employed by undertakings having less than five or more than 249 workers in the areas specified in article 1.

<sup>1</sup> Spanish text of decree No. 37 of the Executive in *Diario Oficial* of 12 May 1954. Translation by the United Nations Secretariat.

If, however, the governing board, in the light of a report by the Directorate-General, considers that there is a possibility of including in the insurance scheme



workers at present excluded by this article, it may order that such workers shall be so included, and it shall accordingly give one month's notice to the undertakings and the workers concerned.

...

[Chapter II defines the remuneration which is subject to insurance charges and chapter III deals with the obligation of employers whose employees are subject to the insurance scheme.]

#### CHAPTER IV MEDICAL BENEFITS

*Art. 14.* The insured persons and beneficiaries mentioned in the Social Insurance Act<sup>1</sup> shall be entitled to the medical benefits specified in articles 48, 53, 59 and 71 of the said Act.

An insured person shall always be entitled to these benefits so long as he is working, but if he is unemployed, he shall be so entitled only if he has been insured for at least eight weeks out of the four months previous to the date of his first application for medical assistance.

In order to be entitled to maternity benefits, it shall be necessary to have been insured for twenty-six weeks out of the twelve months preceding confinement. Pre-natal assistance shall, however, be given in all cases where the worker is entitled to sickness benefits.

*Art. 15.* Medical assistance shall be given at the physician's office, at the home of the insured or in a hospital for a period up to twenty-six weeks in respect of any single illness, and this period may be extended up to fifty-two weeks where the medical authorities of the institution consider that such treatment may lead to a complete recovery or may avoid or prevent invalidity or an appreciable diminution of the patient's capacity to work.

...

#### CHAPTER V BENEFITS IN CASH AND IN KIND IN CASE OF SICKNESS, ORDINARY ACCIDENT AND MATERNITY

*Art. 23.* Cash benefits shall be granted in all cases where an insured person is not unemployed. If such person is unemployed, he shall be required to show that he has been insured for at least eight weeks out of the three calendar months immediately preceding the relevant application.

<sup>1</sup> See *Yearbook on Human Rights for 1953*, p. 250.

*Art. 24.* Where, as a result of sickness, an insured person is incapable of working, he shall be entitled to a daily benefit in respect of temporary incapacity as from the fourth day of the incapacity if he is certified as being so entitled by a physician attached to or authorized by the institution.

Entitlement to such benefit shall continue until the insured person, in the opinion of a physician attached to or authorized by the institution, has recovered his capacity to work, or until the expiration of a period of not more than fifty-two weeks in respect of one and the same illness.

*Art. 25.* A maternity cash benefit shall be granted where an insured woman has been insured for twenty-six weeks out of the twelve calendar months previous to the month of probable confinement.

*Art. 26.* The maternity benefit provided for in article 59, paragraph (d), of the Act, shall be granted for a period of twelve weeks, which must include the date of confinement.

[There follow provisions dealing with the amount and duration of the benefits which may be granted.]

#### CHAPTER VI CASH BENEFITS IN CASE OF INDUSTRIAL ACCIDENTS AND OCCUPATIONAL DISEASES

*Art. 31.* In the case of an industrial accident or occupational disease, the following cash benefits shall be granted:

- (a) A daily benefit in case of temporary incapacity;
- (b) A pension in case of partial or total permanent incapacity;
- (c) Widows' and orphans' pensions in case of death.

[There follow provisions defining the amount and duration of the benefits which may be granted.]

#### CHAPTER VII CONTRIBUTIONS AND COLLECTION OF CONTRIBUTIONS

*Art. 46.* The total amount of contribution to be paid by the various sectors in the first stage of the operation of the social insurance scheme shall be 10 per cent of the remuneration subject to insurance as provided in chapter II of these regulations.

[Further provisions deal with the obligation of the employer to remit to the institute his own as well as his employees' contributions to the insurance scheme.]

# SAUDI ARABIA

## SAUDI ARABIAN NATIONALITY ORDINANCE, 1954<sup>1</sup>

of 20 October 1954

...

*Art. 3.* In this ordinance,

(a) "Saudi Arabian national" means a person subject to the Government of His Majesty the King in accordance with the provisions of this Ordinance;

(b) "Naturalized Saudi Arabian" means a person who has obtained Saudi Arabian nationality by virtue of the relevant provisions of this Ordinance;

(c) "Alien" means any person other than a Saudi Arabian national;

(d) "Incapable person" means a minor or a lunatic or a mental defective;

(e) "Majority" has the meaning assigned to it by the religious law;

(f) "Kingdom of Saudi Arabia" includes all the territory and waters and air space under the dominion of Saudi Arabia, and all ships and aircraft carrying the Saudi Arabian flag.

*Art. 4.* A person shall be a Saudi Arabian national if:

(a) He was a subject of the Ottoman Empire in 1914 and one of the original inhabitants of the territory of the Saudi Arabian Kingdom;

(b) He was an Ottoman subject born within the territory of the Kingdom of Saudi Arabia, or resident therein in 1332 or 1914, and continued to reside therein until 22 Rabi' Awwal 1345<sup>2</sup> and had not acquired foreign nationality before that date;

(c) Not being an Ottoman subject, he resided within the territory of the Kingdom of Saudi Arabia in 1332 or 1914 and continued to reside therein until 22 Rabi' Awwal 1345<sup>2</sup> and had not acquired foreign nationality before that date.

*Art. 5.* Article 4(a) shall apply to a woman who was an original inhabitant of the territory of the King-

dom of Saudi Arabia and who applies for restoration of Saudi Arabian nationality after her divorce or the death of her husband.

...

*Art. 7.* A person born in the Kingdom of Saudi Arabia or abroad to a Saudi Arabian father, or to a Saudi Arabian mother by a father unknown or of unknown nationality, shall be a Saudi Arabian national.

*Art. 8.* A person born in the Kingdom of Saudi Arabia to two alien parents or to an alien father and to a Saudi Arabian mother, or born abroad to an alien father of known nationality and a Saudi Arabian mother, shall be an alien; provided that when he attains majority he shall be entitled to opt for Saudi Arabian nationality if he satisfies the following requirements:

(a) He is permanently resident in the Kingdom of Saudi Arabia on attaining majority;

(b) He is of good character and conduct and has not been convicted of a crime or sentenced to imprisonment for a term exceeding six months for a moral offence;

(c) He knows the Arabic language;

(d) He has applied within one year after attaining majority for a grant of Saudi Arabian nationality; and a lunatic or a mental defective shall have the nationality of his father if living or otherwise of his guardian under the religious law; and his father or guardian shall opt Saudi Arabian nationality in respect of him after the requirements aforesaid have been satisfied.

*Art. 9.* Saudi Arabian nationality may be granted to an alien who satisfies the following requirements:

1. He shall have attained his majority by the date of the application;

2. He shall not be a lunatic or a mental defective;

3. He shall at the time of application:

(a) Have been permanently and usually resident in the Kingdom of Saudi Arabia for not less than five consecutive years in accordance with the relevant provisions of law;

(b) Be of good character and conduct;

(c) Never have been sentenced to imprisonment for a moral offence;

(d) Be maintaining himself by lawful means.

<sup>1</sup> Arabic text in *Um-al-Qura*, the official gazette of the Saudi Arabian Government, No. 1539, of 12 November 1954 (16 Rabi' al-Awwal 1374). This ordinance was enacted by the Council of Ministers by resolution No. 4, of 23 September 1954 (25 Muharram 1374), and promulgated by the Government in royal proclamation No. 8/20/5614, of 20 October 1954 (22 Safar 1374). Information received through the courtesy of Mr. Jamil M. Baroody, Alternate Representative of Saudi Arabia to the United Nations. English translation from the Arabic text by the United Nations Secretariat.

<sup>2</sup> 12 July 1926, the date of publication of the first nationality ordinance.

An applicant for naturalization shall append to his application his permanent residence permit, his legal passport or other document accepted by the competent authorities as equivalent thereto, and any other document in his possession relating to the nationality which he is about to relinquish, and documents evidencing the matters which he is required by this ordinance to establish.

*Art. 10.* Saudi Arabian nationality shall be granted by the President of the Council of Ministers on a motion by the Minister of the Interior, who may, in any case, before making such motion and without disclosing a reason, withhold his consent to the grant of Saudi Arabian nationality to an alien satisfying the requirements of article 9.

*Art. 11.* A Saudi Arabian national may not acquire a foreign nationality without prior permission from the President of the Council of Ministers, and a Saudi Arabian national who acquires a foreign nationality before obtaining the said permission and in anticipation thereof shall continue to be a Saudi Arabian national unless His Majesty's Government sees fit to deprive him of Saudi Arabian nationality in accordance with article 13.

*Art. 12.* The wife of a Saudi Arabian national who acquires a foreign nationality by permission shall, if she obtains the new nationality of her husband under the law relating thereto, lose her Saudi Arabian nationality unless within one year after her husband acquires the nationality aforesaid she declares her desire to retain her Saudi Arabian nationality.

A minor child shall lose his Saudi Arabian nationality if under the law relating to the new nationality he acquires the same by virtue of his father's change of nationality; but he shall be entitled to restoration of Saudi Arabian nationality within one year after he attains majority.

*Art. 13.* A Saudi Arabian national may be deprived of Saudi Arabian nationality by reasoned decree on any of the following grounds:

(a) He has acquired another nationality in breach of the provisions of article 11 of this Ordinance;

(b) He has served in the armed forces of a foreign government without prior permission of His Majesty's Government;

(c) He has acted in the interests of a foreign State or government at war with the Kingdom of Saudi Arabia;

(d) He has accepted office in a foreign government or international organization and has remained therein despite an order of His Majesty's Government to quit the same.

In any of the cases mentioned in paragraphs (a)-(d) of this article the Saudi Arabian national shall, at least three months before the date of any decree depriving him of Saudi Arabian nationality, receive a notice

warning him of the consequences of his act; and in every case in which Saudi Arabian nationality is withdrawn in accordance with the provisions of this article the property of the person thus deprived of nationality shall be liquidated in accordance with the Real Property Regulations, and he may be forbidden to reside in the territory of the Kingdom of Saudi Arabia or to return thereto.

*Art. 14.* The wife of an alien acquiring Saudi Arabian nationality shall acquire it also thereby, unless within one year of his acquisition thereof she declares her desire to retain her original nationality; and a minor child of such an alien shall, if resident in the Kingdom of Saudi Arabia, be a Saudi Arabian national, but shall be entitled to opt for his father's original nationality within one year from the date on which he attains majority, and if resident abroad shall be an alien, but shall be entitled to opt for his father's Saudi Arabian nationality within one year from the date on which he attains majority.

*Art. 15.* A naturalized person shall be required to make a separate application for grant of Saudi Arabian nationality to each woman whose guardian he is under the religious law and by virtue of a certificate issued in accordance with that law.

*Art. 16.* An alien woman shall on marriage to a Saudi Arabian national acquire his nationality.

*Art. 17.* Without prejudice to any provision of article 132 or article 133 of the Code of Procedure in Religious Courts, a Saudi Arabian woman shall not lose her nationality on marriage to an alien unless she is permitted to leave the kingdom with her husband (in accordance with the ordinance relating thereto) and afterwards declares and publishes her acquisition of her husband's nationality and acquires the same by virtue of the relevant provisions of law.

*Art. 18.* A Saudi Arabian woman who has been married to an alien may, if she returns to reside in the kingdom after dissolution of the marriage, apply for restoration of Saudi Arabian nationality.

*Art. 19.* The following provisions shall apply to wives and children of persons deprived of Saudi Arabian nationality:

(a) The wife of a man deprived of Saudi Arabian nationality under article 13 may opt to acquire her husband's new nationality or to retain Saudi Arabian nationality, and if she has opted for his nationality and her marriage is subsequently dissolved, she may apply for restoration of her Saudi Arabian nationality. A minor child resident abroad shall, on attaining majority, be entitled unconditionally and without restriction to opt for Saudi Arabian nationality, and shall thereupon acquire all the rights of a Saudi Arabian national without exception;

(b) Loss of Saudi Arabian nationality by a person under article 11 shall not entail its loss by his wife

or child or by any person who has such nationality through dependence.

*Art. 20.* A person who has completed the period of residence required for grant of Saudi Arabian nationality and has applied for naturalization and then leaves the Kingdom on a passport of the government of his original nationality before he has been granted Saudi Arabian nationality and remains absent from the country for a period exceeding one year shall lose credit for any period of residence. A person who has completed his required period of residence and leaves the country without applying for Saudi Arabian nationality and remains abroad for a period exceeding six months from the date of issue of his re-entry permit shall cease to be entitled to apply for nationality.

*Art. 21.* Saudi Arabian nationality may, on application by the Minister of the Interior, be withdrawn by reasoned decree from any person naturalized under article 8, 9 or 10 of this ordinance during the first five years thereafter on either of the following grounds:

(a) He has been convicted of a crime or sentenced to a period of imprisonment exceeding one year for a moral offence;

(b) He is proved to have done or abetted any act prejudicial to the general safety of the kingdom, or to have become, by reason of his conduct, a person whose presence in the country is undesirable.

...

*Art. 28.* This ordinance repeals the Saudi Arabian Nationality Ordinance brought into effect by royal administrative order No. 7/1/47 on 5 December 1938 (13 Shawal 1357), and all previous ordinances relating to Hejazi nationality or to Hejazi-Nejdi nationality, and all provisions of other ordinances contrary to the provisions of this ordinance.

...

*Art. 29.* His Majesty the King shall alone have the right to grant Saudi Arabian nationality to any person who does not satisfy the requirements specified in article 9, or to deprive of his nationality any Saudi Arabian national to whom the terms of article 13 hereof do not apply.

*Art. 30.* This ordinance shall be deemed to have effect as from the date of its promulgation and publication in the official journal.

## SWEDEN

### NOTE<sup>1</sup>

#### I. LEGISLATION

##### HEALTH, MATERNITY AND EMPLOYMENT INJURY INSURANCE IN SWEDEN

In 1946, the Swedish Parliament approved a bill on compulsory health insurance, but the coming into force of the new Act was postponed, mainly for financial reasons. A new government bill prepared on the basis of the report of a Committee of experts was submitted to and adopted by Parliament in 1953.

The new Act, which is effective as from 1 January 1955, establishes a system of medical care insurance and health benefit insurance. Separate legislation on the supply of free and subsidized medicines within the framework of the new medical care insurance was passed by Parliament in 1954. In the case of certain sicknesses essential medicines which must be used during long periods are granted free of charge; the cost of other medicines prescribed by a doctor is refunded to the extent of 50 per cent of the amount by which the cost exceeds 3 kronor.

The new scheme does not grant maternity and childbirth benefits; special legislation on those benefits has been passed by Parliament in 1954.

Health insurance is co-ordinated with employment injury insurance, on which a new Act has also been passed by Parliament in 1954. According to the Employment Injury Insurance Act, the national health insurance scheme covers the cost for medical care and sickness benefits for the first ninety days after the contingency occurs, except for certain benefits which are to be borne entirely by the employment injury insurance from the beginning.

Under the new legislation, insurance for medical care is compulsory for all Swedish citizens aged sixteen years or over. Persons who are not Swedish citizens but who are resident and registered in the country are treated as Swedish citizens for the purpose of the Act. Children under the age of sixteen are indirectly insured as dependants of their parents. Apart from a few exceptions, mainly persons living in institutions (invalids, mental defectives, prisoners), the insurance covers the whole population resident in Sweden. Persons having an annual income in cash or in kind of at least 1,200 kronor from gainful occupation (a normal income of a worker is 6,000–10,000 kronor a year) are insured compulsorily for daily cash benefits. Domestic

work performed by the housewife in the home is not considered as gainful occupation in this connexion. However, a housewife is in most cases compulsorily insured for sickness benefit even if her income is less than 1,200 kronor a year. There is no upper income limit for liability to insurance.

The insurance refunds 75 per cent of doctors' fees (including doctors' travelling expenses), in so far as these fees do not exceed certain maximum rates. These maximum rates are fixed by the Government, but private doctors are not bound by them. The patient has a free choice of doctor, and the insurance refunds the sum prescribed without regard to the actual fee charged by the doctor. The majority of doctors do not charge more than the rates which entitle the patient to get 75 per cent of the actual cost refunded by the insurance. The scheme also refunds 75 per cent of the expense of the transport of the patient to and from the doctor's surgery and from a hospital, with the exception of a small amount which has to be borne by the patient himself. The travel cost to a hospital is repaid totally to the patient.

The cost of hospitalization is refunded generally at the rates for treatment in a public ward.

While other medical benefits are granted without time limit, hospitalization is limited to 730 days for each case of sickness. For recipients of old-age or disability pensions the duration is, however, limited to ninety days.

The insurance may under certain conditions grant the employer compensation for medical care and other health services provided by him.

All persons insured for sickness benefits are granted a basic benefit at a uniform rate of 3 kronor daily. In addition, all insured persons having an annual income from employment of at least 1,800 kronor are insured compulsorily for a supplementary benefit, the rates of which are graduated according to the income and range in 13 income classes from 1 to 17 kronor daily. The highest income class consists of persons having an income of 14,000 kronor or more annually. The total benefit (basic and supplementary) thus ranges from 3 to 20 kronor daily. This means that gainfully occupied persons receive 65–70 per cent of the suspension of earnings during ninety days. The supplementary benefit is reduced for most income classes after ninety days of benefit payment; thus the total benefit will range from 3 to 12 kronor daily from the ninety-first day onward.

<sup>1</sup> Note received through the courtesy of the Royal Ministry for Foreign Affairs, Stockholm.

Insured persons whose income is derived wholly or partly from a gainful occupation other than employment (independent workers, farmers, fishermen, etc.) may insure voluntarily for supplementary sickness benefits at rates corresponding to their income.

Housewives not compulsorily insured for supplementary sickness benefits may insure voluntarily for a supplementary benefit at prescribed rates. Students and similar persons may on certain conditions insure for both basic and supplementary benefits, the latter at special prescribed rates. A state subsidy to the voluntary insurance amounts to 20 per cent of the sickness benefit paid under this type of insurance.

The sickness benefit is increased by a children's supplement in respect of dependent children at the daily rate of 1 krona for one or two children, 2 kronor for three or four children, and 3 kronor daily for five or more children.

The waiting period for sickness benefit is three days and the maximum duration is 730 days for the same spell of sickness, except for persons eligible for national pensions, for whom the duration is limited to ninety days.

The compulsory maternity insurance scheme is co-ordinated with the health insurance. The general principle of the maternity insurance scheme may be said to be that women will receive sickness benefits during ninety days in connexion with the confinement. Thus, as a cash benefit to employed mothers will be paid at the same rate as under the general health insurance, these mothers will receive 65-70 per cent of the suspension of earnings during ninety days. All women irrespective of income will receive a cash benefit of at least 270 kronor at childbirth and free confinement services in hospitals or at home.

A new Employment Injury Insurance Act was adopted in Sweden on 14 May 1954 providing compulsory insurance for all persons in public and private employment against employment injury. The spouse of the employer is exempted from compulsory insurance as are close relatives of the employer living in his household, provided they are not insured for sickness benefits under the National Health Insurance Act.

The Act also provides for voluntary insurance against injuries outside employment and for persons not compulsorily insured against employment injuries.

The new Act, like previous legislation, provides for medical care, dental care, hospitalization, transport, pharmaceuticals, prosthetic appliances, etc., and periodical cash benefits in case of temporary and permanent incapacity and for survivors, as well as funeral allowances.

The employment injury insurance scheme is co-ordinated with the national health insurance scheme; the cost of medical care and sickness benefits for the

first ninety days after the contingency occurs is covered by sickness insurance, except for persons who are not insured under the health insurance scheme, in which case the cost is covered by employment injury insurance. Some special benefits such as prosthetic appliances, physiotherapy, etc., which are not normally granted by the health insurance scheme, are borne by the employment injury insurance scheme from the beginning.

The benefits in case of temporary incapacity are the same as the sickness benefits under the national health insurance scheme (ranging from 3 to 20 kronor daily).

## II. JUDICIAL DECISION

*The facts.* Monica was born in 1945 in wedlock between two Sudeten Germans. Her parents, now German citizens living in western Germany, accepted the offer of a Swedish married couple of Sudeten origin to receive Monica into their home in Malmö, Sweden, and to care for her until conditions in western Germany improved. Monica accordingly arrived in Sweden in November 1945. In 1950, after some hesitation, the parents agreed to a proposal of the foster mother to apply for Swedish citizenship for Monica, having been informed by the foster parents that Monica's Swedish citizenship would give her several advantages in western Germany and that it would in no way prevent her repatriation. Monica became a Swedish citizen in November 1950 and has also held German citizenship since August 1952. The foster mother delayed Monica's return to her parents, despite the latter's requests, with the result that Monica did not return to her parents until 1951, when she went accompanied by her foster mother. The foster mother brought Monica back with her to Sweden in April 1951, without the knowledge or consent of the parents, and the foster parents thereafter refused to repatriate Monica.

In view of this, her parents instituted proceedings against the foster parents before the district court at Malmö on 18 October 1951, asking that the foster parents be instructed to surrender the child. The foster parents contested the claim, maintaining, *inter alia*, that the surrender of Monica would imply her repatriation to Germany. Since, however, Monica was holding Swedish citizenship her transfer by force to another country would be contrary to the Swedish Constitution.

*Held.* That the request should be granted and the foster parents accordingly be instructed to surrender Monica to her parents immediately.

The court stated that Monica's parents had the legal right to care for their child. In view of this and of the fact that Monica's age precluded any consideration of her own will in respect of care, the court could not find that, according to the Swedish Constitution,

there were any hindrances for her surrender, in spite of her Swedish citizenship.

Medical evidence showed that Monica could be repatriated without delay, her mental structure being such that she would probably not suffer from the transfer to new surroundings. The court furthermore did not accept objections raised by the foster parents to the effect that the parents were not suitable to care for Monica.

The court of appeals of Skåne and Blekinge, to which the foster parents appealed, by a judgement of 2 July 1953, affirmed the judgement of the district court.

The foster parents appealed to the Supreme Court against this judgement, but this court found no reasons for a reconsideration of the case.

### III. CONVENTIONS AND AGREEMENTS

1. On 22 May 1954 a convention was signed by Sweden, Denmark, Finland and Norway respecting a common labour market. The Swedish instrument of ratification was deposited on 22 June 1954.

2. The convention relating to the status of refugees, signed on 28 July 1951, was ratified by Sweden on 16 August 1954 and the instrument of ratification deposited on 26 October 1954.

3. On 28 September 1954 Sweden signed the convention relating to the status of stateless persons.

4. On 17 December 1954 a convention was concluded between Sweden and Switzerland concerning social insurance.

# SWITZERLAND

## NOTE<sup>1</sup>

### I. CONFEDERATION

#### A. LEGISLATION

##### *Labour Protection*

A federal order (arrêté) of 24 September 1954 (*Recueil officiel des lois et ordonnances de la Confédération suisse* 1954, p. 1339) continued in force until 31 December 1956 the federal order of 23 June 1943 under which collective contracts of employment can become generally binding.<sup>2</sup>

##### *Social Welfare and Social Insurance*

The Confederation adopted supplementary legislation concerning the rights of Swiss nationals residing abroad:

(1) An ordinance (*ordonnance*) of 9 April 1954 concerning voluntary old-age and survivors' insurance for Swiss nationals residing abroad (*Recueil Officiel* 1954, p. 540) was issued under the federal Act of 20 December 1946 regarding old-age and survivors' insurance.<sup>3</sup>

(2) An ordinance of 9 April 1954, concerning the application of the system of military allowances to Swiss nationals living abroad (*Recueil officiel* 1954, p. 547), extended, to Swiss nationals living abroad, the federal Act of 25 September 1952 relating to allowances for military personnel for loss of income, which provides allowances for men and women serving in the Swiss Army who before entering military service were gainfully employed, apprenticed or studying (*Recueil officiel* 1952, p. 1046). The allowances vary, within fixed limits, according to marital status, number of dependants, and average daily earnings prior to military service.

The Federal Council, on 9 March 1954, adopted an ordinance relating to occupational accident insurance and the prevention of accidents in agriculture (*Recueil officiel* 1954, p. 480). It covers all accidents of agricultural employees occurring on the property on which they are employed or on their way from or to work. The ordinance also provides for the establishment of an advisory body on the prevention of accidents in agriculture. It was issued in accordance with the provisions of the federal Act of 3 October 1951 relating to the improvement of agriculture and the support of the farming population (*Recueil officiel*, 1951, p. 1095).

<sup>1</sup> This note is based on texts received through the courtesy of Mr. Auguste Lindt, Permanent Observer of Switzerland to the United Nations.

<sup>2</sup> See *Tearbook on Human Rights for 1949*, p. 195.

<sup>3</sup> See *Tearbook on Human Rights for 1948*, pp. 193-195.

### B. RATIFICATION OF INTERNATIONAL INSTRUMENTS

A convention relating to social insurance concluded between Switzerland and the United Kingdom on 16 January 1953 entered into force on 1 June 1954, ratification by Switzerland having been authorized by the Federal Assembly on 23 December 1953. The convention provides that on the territory of the Confederation on the one hand, and in England, Scotland, Wales, Northern Ireland and the Isle of Man on the other, nationals of Switzerland and nationals of the United Kingdom and its colonies shall enjoy, as far as possible, equality of treatment in matters of social insurance by being admitted to the benefits of the other party's legislation (*Recueil officiel* 1954, pp. 1021 ff.).

The Social Insurance Convention concluded on 4 April 1949 between Switzerland and Italy<sup>4</sup> was replaced by a new Social Insurance Convention, which was signed on 17 October 1951 and entered into force on 28 December 1953, ratification by Switzerland having been authorized by the Federal Assembly on 21 December 1953. In accordance with this convention the nationals of Switzerland and the nationals of Italy enjoy, reciprocally, equal treatment (subject to certain exceptions) under Swiss legislation relating to federal old-age and survivors' insurance on the one hand and Italian invalidity, old-age and survivors' insurance on the other (*Recueil officiel* 1954, pp. 249 ff.).

By federal order of 24 March 1954, the Federal Assembly approved a convention signed on 15 December 1953 between Switzerland and the Federal Republic of Germany, which extended indefinitely, or until denunciation by one of the parties, the convention of 14 July 1952<sup>5</sup> concerning the relief of needy persons (*Recueil officiel* 1954, p. 1159).

By federal order of 17 March 1954, the Federal Assembly authorized Switzerland's adhesion to the international convention of 23 September 1910 for the unification of certain rules of law respecting assistance and salvage at sea, as well as to the international convention of 10 June 1948 for the safety of life at sea (*Recueil officiel* 1954, pp. 767, 790 and 802).

### II. CANTONS

#### *Protection of Life and Health*

The Canton of Vaud issued an order dated 12 November 1954 relating to permissible interruption of pregnancy.

<sup>4</sup> See *Tearbook on Human Rights for 1950*, p. 268.

<sup>5</sup> See *Tearbook on Human Rights for 1953*, p. 255.



### *Humane Treatment of Offenders*

The Canton of Berne issued an ordinance dated 24 December 1954, relating to district jails in the canton. It provides for the separation of prisoners into various categories, including juveniles, and for separate quarters for men and women. No person may be accepted as a prisoner without a written warrant. Prisoners may usually keep their own clothing, except for shoes; are to receive three meals totalling at least 2,000 calories, and are to spend, wherever possible, a minimum of one half-hour every other day in the fresh air. Corporal punishment is prohibited.

### *Labour Protection*

The Cantons of Berne and Obwalden issued standard contracts for certain categories of employees, which regulate working conditions unless a special written agreement between employer and employee provides otherwise. Copies of the standard contract are to be handed to the employees when they enter service. These contracts were the following:

*Berne:* Standard contract of 23 November 1954 for persons employed in agriculture and in agricultural households.

*Obwalden:* (a) Standard contract of 26 March 1954 for female employees in private households; (b) standard contract of 26 March 1954 for female employees in agriculture.

### *Social Welfare and Social Insurance*

By a decree dated 16 November 1954 relating to emergency assistance for insured unemployed persons, the Canton of Berne provided for cantonal subsidies to communes offering such emergency assistance. The Grand Council of the canton decides whether, in any given case, the pre-requisites for cantonal assistance exist. The contribution could be specifically for members of certain branches of the economy or for certain employment groups. Emergency assistance may be granted only to unemployed persons who are insured and have exhausted the payments to which they are entitled for the year in question. Eligibility is, moreover, dependent upon certain age and residence qualifications and upon need. Supplementary regulations were issued in an ordinance of 26 November 1954.

An ordinance regarding insurance against and the prevention of accidents in agriculture was issued by the Canton of Berne on 23 November 1954 in connexion with the federal ordinance of 9 March 1954 relating to accident insurance in agriculture.<sup>1</sup> It provides for obligatory insurance of the employee with a federally approved insurance company. The insurance premium is payable by the employer; in the case of employers with low incomes, situated in certain mountainous regions, the canton contributes part of the cost of the premium. Employers are, moreover, obliged to take appropriate measures to

prevent accidents and were made subject to prosecution for failure to observe safety regulations.

By an Act of 24 May 1954, amended by an Act of 21 December 1954, Neuchâtel provided for the establishment of a pension fund for persons in the service of the Canton of Neuchâtel, communes in Neuchâtel, cantonal institutions and institutions of recognized general interest. The fund provides coverage in cases of disability, old age and death.

### *Protection of the Family*

On 20 June 1954 the Canton of Berne adopted, subject to plebiscite, an Act relating to subsidies for dwellings intended for large families with low incomes. This law provides for financial assistance by the canton to communes for the construction of such dwellings. The communes possess, however, no legal claim to these subsidies. An order implementing the Act was issued on 10 December 1954.

Neuchâtel adopted a decree, dated 24 May 1956, relating to assistance in the construction of low-cost housing.<sup>2</sup>

On 9 May 1954, Obwalden adopted an Act relating to family allowances for employees. The allowances are based on the number of children, including legitimate and illegitimate children, stepchildren and foster children.<sup>3</sup> An Order implementing the Act was issued on 9 July 1954.

The Canton of Vaud, on 30 November 1954, adopted a new Act of family allowances, replacing the Act of 26 May 1943 on that subject.

### *Education*

Abrogating previous legislation in the matter, the Canton of Berne, on 7 February 1954, adopted an Act relating to the university. This Act provides for a university supported by the canton, which is to further scientific knowledge and provide training in the academic professions. According to the Act, freedom of research and teaching are guaranteed and there is freedom of study within the framework of the academic order. French and German are on equal footing as languages of instruction. Lectures may also be given in Italian. Any person having sufficient prior education may be admitted to the university. Needy students may be relieved of fees and may be granted scholarships.

Repealing previous provisions relating to the subject, the Canton of Obwalden issued an ordinance relating to scholarships, dated 23 February 1954. It provides for a commission on scholarships, elected by the cantonal Council, which awards scholarships on the basis of the economic situation of the applicant and the number of children in his family, as well as on the basis of his character, diligence and ability. Scholarships may be awarded for secondary studies, agricultural, teacher and technical training, theological studies and, exceptionally, art studies.

<sup>2</sup> Compare *Yearbook on Human Rights for 1948*, pp. 190-191.

<sup>3</sup> Compare *Yearbook on Human Rights for 1948*, p. 191.

<sup>1</sup> See above, p. 254.

## JUDICIAL DECISION

SECRECY OF CORRESPONDENCE—LIMITATION IN THE INTEREST OF  
ADMINISTRATION OF CRIMINAL PROCEDURE—ARTICLE 36 OF  
THE FEDERAL CONSTITUTION—ARTICLE 6 (3) OF THE POSTAL ACT—  
ARTICLE 7 OF THE TELEGRAPH AND TELEPHONE ACT

PROSECUTOR'S OFFICE OF THE CANTON OF BASLE-STADT *v.* CENTRAL OFFICE  
OF THE POST, TELEGRAPH AND TELEPHONE ADMINISTRATION

*Swiss Federal Court*<sup>1</sup>

9 December 1953

*The facts.* An examining magistrate (juge d'instruction—Untersuchungsrichter) in Berne opened criminal proceedings against X and T, both fugitives from justice and subject to arrest, on charges of fraud, forgery and embezzlement. He had reason to believe that both persons were in contact with Z. Expecting thereby to ascertain the whereabouts of X and T, he requested the Central Office of the Post, Telegraph and Telephone Administration, in accordance with article 6 (3) of the Postal Act<sup>2</sup> and article 7 of the Telegraph and Telephone Act,<sup>3</sup> to register the contents

of all Z's incoming and outgoing telephone calls and to divert any telegrams and mail addressed to him to the security and criminal police of the city of Berne. The central office of the Post, Telegraph and Telephone Administration rejected the request as having no legal basis.

The matter eventually came before the Federal Court.

*Held.* That the request of the investigating magistrate of Berne, taken over by the Prosecutor's Office of Basle-Stadt, be granted and that the Central Office of the Post, Telegraph and Telephone Administration be directed to comply with it.

<sup>1</sup> For the German text of this decision, see *Entscheidungen des Schweizerischen Bundesgerichtes aus dem Jahre 1953* Vol. 79, part IV, pp. 179–186. Summary by the United Nations Secretariat.

<sup>2</sup> Articles 5 and 6 (3) of this, the federal Act of 2 October 1924 relating to the postal service, read as follows:

"Art. 5. No person entrusted with a function in the postal service may disclose any information about the postal relations of any given person, or open items sent through the post, or try to discover their contents, or communicate about their contents in any way with third persons, or afford anyone an opportunity of committing such acts.

"Art. 6. . . .

"(3) Upon the written request of the competent judicial or police authority, the Postal Administration is obliged to surrender postal shipments, payments being made into postal accounts and the total balances in such accounts, and to furnish any information regarding the postal relations of given persons, where preliminary criminal proceedings [instruction pénale] or the prevention of crimes or misdemeanours are involved."

<sup>3</sup> Articles 6 and 7 (1) of this, the federal Act of 14 October 1922 relating to telegraphic and telephonic correspondence, read as follows:

"Art. 6. Persons in charge of ensuring the telephone or telegraph services are forbidden to inform third persons of the content of telegrams entrusted to them and of telephone conversations which they have transmitted or of the telegraphic or telephonic exchanges of given persons; they are also forbidden to afford an opportunity to anyone whomsoever to commit such acts.

"Art. 7. (1) The Telegraph Administration is obliged, upon the written request of the competent judicial or police authority, to surrender telegrams, to communicate service records relating to exchanges by telephone, or to furnish information about the telegraphic or telephonic relations of given persons, when preliminary criminal proceedings [instruction pénale] have been opened, when the

After examining the obligation of reciprocal aid between authorities of the Federation and authorities of the cantons in matters relating to criminal procedure, the Court stated that the obligation of the Post, Telegraph and Telephone Administration in this respect was not unlimited, but, in view of the secrecy of the mails guaranteed in article 36, paragraph 4 of the federal Constitution,<sup>4</sup> applied only in so far as was permitted by article 6 (3) of the Postal Act and article 7 of the Telegraph and Telephone Act. The Court held that article 6 (3) of the Postal Act and article 7 of the Telegraph and Telephone Act rendered admissible the request made of the Postal, Telegraph and Telephone Administration. The formal legal requirements having been met, it was not for the Administration to decide whether the request was admissible under cantonal criminal law. Nor was the request rendered inadmissible by the fact that the criminal investigation involved a person other than the one placed under surveillance, since a sufficient connexion existed between the person and the investigation: X and T had been in contact with Z and possibly still were, and the latter's surveillance therefore appeared suitable for the finding of the whereabouts of the fugitives.

prevention of a crime or a misdemeanour is involved or in the case of civil litigation."

<sup>4</sup> See *Tearbook on Human Rights for 1947*, p. 293.

# SYRIA

## NOTE

1. Act No. 173, of 18 May 1954, repealed a series of acts and decrees enacted during 1952–1953, including the following:

(a) Legislative decree No. 151, of 21 June 1953,<sup>1</sup> requiring a referendum on a Provisional Constitution and the election of a President (article 128 of this Constitution, which was approved by a referendum of 10 July 1953, repealed the Constitution of 5 September 1950, of which the articles relating to human rights were published in *Yearbook on Human Rights for 1950*, pp. 279–284).

(b) Act No. 6, of 15 July 1953,<sup>2</sup> repealing the Electoral Law, decree No. 17 of 10 September 1949.<sup>3</sup>

(c) Legislative decree No. 11, of 30 July 1953, containing electoral provisions, as amended by Legislative decree No. 63 of 21 September 1953.

(d) Legislative decree No. 257, of 8 June 1952, concerning the reorganization of public powers.

(e) Legislative decree No. 197, of 6 April 1952, concerning the dissolution of all parties and political associations.

Act No. 173 of 1954 provided further that: "All legal provisions in force before the promulgation of the decrees and laws mentioned in this Act shall be restored, unless presented once again to Parliament for adoption, amendment or annulment."<sup>4</sup>

2. Act No. 169, of 12 May 1954, repealed Act No. 134 of 8 October 1953 on the press<sup>5</sup> and restored legislative decree No. 53 of 8 October 1949, adding thereto several new articles, including the following:

"Art. 5. If any periodical advocates a change in the Constitution of the State by unconstitutional means, or the support of unconstitutional methods, or insubordination against the authorities duly set up in accordance with constitutional provisions, the person responsible is an offender and the periodical's permit

for publication shall be void, in addition to the penalties prescribed in laws already in force.

...

"Art. 7. The Prime Minister, with the consent of the Council of Ministers, shall refuse to grant a permit to any periodical, or any person, whether owner, or responsible manager, or editor-in-chief of a periodical, if it is established that any one of these has supported any unconstitutional regime."<sup>6</sup>

Art. 9 provided judicial procedures for appeals against the decision of the Council of Ministers on the part of those directly concerned or any citizen.

3. Act No. 188, of 28 June 1954,<sup>7</sup> as amended by law No. 3, of 23 November 1954, re-enacted the electoral law of 10 September 1949, subject to certain amendments relating to qualifications of candidates and electoral procedures. Article 22 (d)<sup>8</sup> was amended so as to provide that a candidate for parliament "must be able to read and write".

4. Decree No. 1390, of 19 July 1954, allocated the 133 parliamentary seats amongst the Muslim and non-Muslim population as follows: 117 Muslim representatives and 16 non-Muslim representatives.<sup>9</sup>

5. Act No. 209, of 2 August 1954,<sup>10</sup> adds a new paragraph to the law on private schools, legislative decree No. 175, of 17 March 1952,<sup>11</sup> concerning certain academic requirements for directors of private schools in villages and provinces.

6. Decree No. 1524, of 4 August 1954,<sup>12</sup> concerned organization of rural education and the establishment of rural elementary schools.

<sup>6</sup> Arabic text of Act No. 169 of 1954 appears in *Official Gazette of the Syrian Republic* No. 21, of 13 May 1954, p. 2337. Translation by the United Nations Secretariat.

<sup>7</sup> Arabic text in *Official Gazette of the Syrian Republic* No. 28, of 28 June 1954, pp. 3199–3201.

<sup>8</sup> See *Yearbook on Human Rights for 1949*, p. 203.

<sup>9</sup> Arabic text in *Official Gazette of the Syrian Republic* No. 35, of 25 July 1954, p. 3777.

<sup>10</sup> Arabic text in *Official Gazette of the Syrian Republic* No. 39, of 5 August 1954, p. 4023.

<sup>11</sup> See *Yearbook on Human Rights for 1952*, pp. 265–266.

<sup>12</sup> Arabic text in *Official Gazette of the Syrian Republic* No. 41, of 26 August 1954, p. 4228.

<sup>1</sup> and <sup>2</sup> See *Yearbook on Human Rights for 1953*, p. 260.

<sup>3</sup> See *Yearbook on Human Rights for 1949*, pp. 203–204.

<sup>4</sup> Arabic text of Act No. 173 appears in *Official Gazette of the Syrian Republic* No. 24, of 31 May 1954, p. 2574. Translation by the United Nations Secretariat.

<sup>5</sup> See *Yearbook on Human Rights for 1953*, p. 260.

# THAILAND

## NOTE<sup>1</sup>

### I. LEGISLATION

A Social Insurance Act was enacted on 1 February 1954 to comply with articles 22 and 23 of the Universal Declaration of Human Rights (*Royal Thai Government Gazette*, of 15 February 1954, Vol. 71, part 11, p. 65). The Act establishes a Social Insurance Fund made up of contributions from the insured, the employers and the Government. According to section 6 of the Act, every person between sixteen and sixty years of age shall be insured in accordance with the provisions of the Act, and such insurance shall be such an individual's right and duty. Civil servants entitled to a pension or gratuity, aliens temporarily residing in the kingdom, and certain categories of persons over fifty years of age do not fall within the scope of the Act. Social benefits provided in the Act cover, among other contingencies, maternity, children's allowances, sickness, invalidity, old age and funeral service. A royal decree is to be issued determining the date of entry into force of this Act for each category of benefit and the date of coming into force of the rules, procedures and conditions governing payment of benefits in accordance with ministerial regulations to be issued. Benefits consist of payments in cash, payments in kind or other services.

The Social Insurance Fund is to be administered by a Social Insurance Committee to be appointed by the Council of Ministers.

Under the Act of 1954 concerning land reform, a

<sup>1</sup> Note based on texts and information received through the courtesy of Mr. Thanat Khoman, Acting Permanent Representative of Thailand to the United Nations.

special committee was to be appointed to examine the acquisition of land obtained by threats, promises or other objectionable means and, in the interests of social justice, to carry out redistribution of land thus acquired.

A Land Code was promulgated on 30 November 1954 (*Royal Thai Government Gazette* of 28 January 1955, Vol. 71, part 78, p. 59). It is largely a consolidation of the existing provisions concerning ownership, registration, transfers, etc., of immovable property, with some amendments designed to bring these provisions up to date. The general principles concerning State property were more clearly defined and, for the first time, rules affecting the private domaine of the State were codified, entrusting its management and financial administration to the Ministry of Finance. Moreover, new rules were issued limiting the amount of land which may be owned by a single person to five rai<sup>2</sup> for living purposes or for commerce, ten rai for industrial purposes and fifty rai for agriculture. The Minister of the Interior may, however, grant exceptions from these rules if he considers such exceptions advisable in the interest of the economic development of the country.

### II. RATIFICATION OF INTERNATIONAL CONVENTION

Thailand has, by ratification deposited on 30 November 1954, become a party to the Convention on the Political Rights of Women.

<sup>2</sup> 1 rai equals two-fifths of an acre.

# TURKEY

## NOTE<sup>1</sup>

### I. LEGISLATION

#### 1. PROTECTION OF THE HUMAN PERSON

##### (i) *Social Security*

A. The Act on the Pensions Fund of the Turkish Republic grants a pension to the widow and children of a deceased civil servant. Under article 75 of this Act, only a daughter who at the time of her father's death was unmarried was entitled to a pension. Act No. 6216, which was promulgated on 9 January 1954, broadens the scope of this article by extending such pension rights to: (a) a daughter who was married at the time of her father's death but is subsequently divorced or widowed; (b) a daughter who, under the old provision, ceased to be entitled to the pension on attaining the age of twenty-five years; and (c) a daughter who, under the old provision, had never been entitled to the pension because she had already attained the age of twenty-five years at the time of her father's death. (*Official Gazette* No. 8603, of 9 January 1954).

B. Under Act No. 6241, which came into force on 1 March 1954, retirement, widows' and orphans' pensions and the pensions drawn by civil servants and disabled servicemen were increased by specified percentages, amounting to as much as 35 per cent. (*Official Gazette* No. 8626, of 5 February 1954.)

##### (ii) *Assistance to Students*

Under Act No. 6303, which came into force on 8 March 1954, the State pays the travelling expenses of students and of pupils attending the public secondary schools who wish to enter the Military Aviation School, and also all expenses of board and lodging during the period of entrance formalities. (*Official Gazette* No. 8652, of 8 March 1954.)

##### (iii) *Protection of Journalists and other Employees of the Press*

Under Act No. 6253, which came into force on 19 February 1954, the provisions governing relations between employers and employees in the press are amended, to the benefit of the employees. The em-

ployers must pay additional remuneration in respect of services not included in the contract of service entered into with the employee. A journalist arrested or imprisoned because of matter published in the periodical for which he works continues to be paid by his employer. The owner of a periodical which ceases publication for any reason whatsoever must continue to pay his employees for the two months following cessation of work. Under another provision of this Act, daily newspapers must not be published as from the second day of each of the two great religious celebrations, during which the journalists and other employees are entitled to a paid holiday. The working day must not exceed eight hours. Additional remuneration amounting to between 25 and 50 per cent of the normal hourly rate must be paid for all overtime work. Additional remuneration for night work must not be less than 50 per cent of the normal hourly rate. (*Official Gazette* No. 8638, of 19 February 1954.)

##### (iv) *Protection of Workers*

Act No. 6298, which was promulgated and came into force on 8 March 1954, amends the Labour Act and provides that the workers' representatives on the labour courts set up for the settlement of labour disputes are to be deemed to be on leave while such courts are in session. The remuneration of these representatives during such period is payable jointly by the workers and the employers. (*Official Gazette* No. 8652, of 8 March 1954.)

##### (v) *Right to Rest Periods*

Act No. 6301, which was promulgated and came into force on 8 March 1954, gives workers the right to rest when work is stopped at noon. Under this Act, all workers in factories, workshops, stores, and offices, as well as all employees of commercial and industrial establishments situated in towns with a population of over 10,000 inhabitants, are entitled to a period of rest at noon, the duration of which must not be less than one hour. Establishments selling food, and pharmacies, public baths, places of entertainment, restaurants, casinos, cafes and similar establishments, as well as establishments supplying petrol, lubricating oil, etc., for the use of motor vehicles, must make special arrangements for the noon rest so that all workers and employees in the establishment may be able to take such rest in turns. (*Official Gazette* No. 8652, of 8 March 1954.)

##### (vi) *Medical Assistance in Case of Accident*

Under Act No. 6309, which came into force on 11 March 1954, the holder of a mining concession must

<sup>1</sup> This note was prepared in French by Mr. Bahri Savci, Professor in the Faculty of Political Science, University of Ankara, on behalf of the Turkish United Nations Group for the Defence and Protection of Human Rights and Fundamental Freedoms, which has been entrusted by the Government of Turkey with the preparation of Turkey's contribution to the *Yearbook on Human Rights*. Translation by the United Nations Secretariat.

take all necessary steps so that in case of accident immediate medical assistance will be available in the vicinity of the mine, and he must lay in a supply of the necessary medicines and medical equipment. (*Official Gazette* No. 8655, of 11 March 1954.)

(vii) *Protection of the Person and of Human Dignity against Crime and Criminals*

Act No. 6334, which was promulgated and came into force on 17 March 1954, is aimed at preventing crimes from being committed through the medium of the press, the influence of which has been great under the multi-party political system prevailing since 1945.<sup>1</sup>

This Act, which has had a sobering effect on the press, also protects those citizens who take part in politics, as well as the members of political parties and statesmen. On the other hand, the critical function of a free press seems to have been unfavourably affected by the excessive prudence and hesitancy which have been a consequence of this Act.

(viii) *Economic and Social Welfare of Seamen*

Act No. 6379, the Maritime Labour Act, which was promulgated and came into force on 20 March 1954, grants a one-month paid holiday to seamen working on vessels flying the Turkish flag, and provides that seamen are to enjoy all the social and economic rights embodied in Turkish social legislation. (*Official Gazette* No. 8663, of 20 March 1954.)

(ix) *Old-age Insurance*

Act No. 6391, which was promulgated on 22 March 1954 and came into force on 1 April 1954, amended the Act on Old-age Insurance and made provision for pensions not only for the insured and his wife and children, but also for his parents. (*Official Gazette* No. 8664, of 22 March 1954.)

## 2. PRINCIPLE OF EQUALITY

### *Non-discrimination in the Treatment of Seamen of Foreign Nationality*

Subject to reciprocity, the Maritime Labour Act, Act No. 6379, which was promulgated and came into force on 20 March 1954, grants to seamen of foreign nationality working on Turkish vessels the same rights as are enjoyed by Turkish seamen.

## 3. PROTECTION OF POLITICAL RIGHTS

### (i) *Restrictions on the Right of Political Criticism*

Act No. 6334<sup>1</sup> provides for the imposition of a penalty of imprisonment for a term of one to three years and of a fine of over 2,500 Turkish pounds on all persons who publish false information or documents that are harmful to the political and financial prestige of the State. The justification for this provision is the false character of the information and docu-

ments concerned. Although a provision thus designed to protect the political and financial prestige of the State against the publication of what is false can be said to have some merit, it is very difficult for a newspaper in Turkey, even if acting in good faith, to verify by its own means all the information and documents which reach it. The threat of a prison sentence thus makes it more often than not impossible for a newspaper to publish information and documents on political and financial matters or even to comment on such information. It is for these reasons that academic and scholarly circles, as well as public opinion, are inclined to regard this provision as restricting the right of political criticism.

### (ii) *Restrictions on the Right to be elected*

A. The Electoral Act, No. 5545, which was adopted on 21 February 1950 for the purpose of meeting the requirements of a new situation, was based on the principle of universal suffrage and contained liberal provisions on the right to vote and to be elected (*Düstur* (Compilation of Laws), Vol. 31, p. 847). Under the provisions of this Act, it was possible for the political parties to agree among themselves to include in their respective lists of candidates the names of persons likely to have a stabilizing influence in the Parliament. It was also possible for an independent candidate to stand for election by having his name included in the list of a political party but without actually relinquishing his status as an independent candidate. In addition, a person who wanted to have his name included in the list of a political party either as a party candidate or as an independent candidate, but who had been unable to do so, could adhere to a political party in order to be included in its list as an official or independent candidate.

Act No. 6428, which was promulgated and came into force on 7 July 1954 (*Düstur* (Compilation of Laws), Vol. 35, p. 1982), precludes these possibilities, which were inherent in the right to stand for election. Although this new Act is aimed at eliminating abuses by political parties and their candidates, it may, because of manoeuvring within the parties, have the effect of making it completely impossible for a person who can no longer be included in the list of a given political party as an official or independent candidate to run for office at all. This new Act also affords to political parties a means of entering into agreements to prevent persons elected as independents from entering the Parliament as independents.

B. Before the adoption of Act No. 6428, civil servants and persons employed by local governments and state business enterprises, were allowed to stand for election. The only limitation was that a mayor or a district commissioner wishing to stand for election in his own administrative area had to resign from his post at least two months before the date set for the election. Under the new Act, any civil servant wishing to stand for election must resign at least six months before the date set for the election.

<sup>1</sup> See below, p. 262.

This new provision therefore constitutes a restriction on the right to be elected, and this is all the more significant in view of the fact that in Turkey the civil service is one of the principal sources upon which the political parties and the Parliament draw for qualified candidates. Because of this new provision, civil servants may perhaps hesitate to resign in order to run the risk of standing for election in a contest which they have no assurance of winning.

(iii) *One-sided Liberalization of the Right to engage in Political Propaganda*

Act No. 6428, some of the provisions of which are discussed above, prohibits judges, civil servants and members of the armed forces from engaging during elections in propaganda favourable or unfavourable to any political party. Although there is nothing objectionable in this provision, the Act also provides that statements or explanations or the publication of documents by a person occupying a responsible post in the Government concerning matters coming within the jurisdiction of his own department do not constitute political propaganda. The practical effect of this provision is to enable government officials, even during an election period, to conduct propaganda in the form of speeches, statements, tables and diagrams purportedly dealing with government activities but actually extolling the achievements of the party in power.

(iv) *Difficulties put in the Way of Exercising the Right to vote*

Before the passage of Act No. 6428, a voter could cast his ballot in favour of a mixed list made up both of candidates from different political parties and of independents. All manner of organizations which were not affiliated to any political party were thus able to print and distribute such mixed lists to the voters.

As the Turkish voter tends to vote not only for political parties, but also for individual candidates in whom he has confidence, he was able to study the lists of candidates of the various political parties, make a selection from among the party and independent candidates and then cast his ballot for a mixed list which suited him. Organizations not affiliated to a political party could sound out the dominant trend in a given region or endeavour to steer that trend in a particular direction by printing and distributing mixed lists which best served this purpose.

Under Act No. 6428, a mixed list is permitted only if it is handwritten by the voter himself. A mixed list which is printed, typewritten, or duplicated by any process whatsoever is not valid, and any vote cast in this manner is null and void. In a country where an appreciable proportion of the voters do not know how

to write and are therefore unable to prepare a mixed list in their own handwriting, such a provision indirectly compels such voters to vote in favour of the lists prepared by the political parties. Even if a voter crosses out the names of one or more candidates from a party list and replaces them by other names, such substitution is without effect, and the printed list as prepared by the political party is considered to have been voted in its original form. This situation inevitably puts obstacles and difficulties in the way of exercising the right to vote and even amounts to interference with that right.

#### 4. REGULATIONS AND DECREES

(i) *Remuneration for Services*

Among the regulations prepared by the various Ministries and adopted by the Council of Ministers on the advice of the Council of State, there is regulation No. 4/3529, which prescribes a new arrangement for distributing the proceeds of tips received from clients for the services of head waiters, waiters, messengers, barmen, porters, etc., who are now remunerated in proportion to the importance of their respective contributions.

(ii) *Hours of Work and Right to Rest*

Among the decrees prepared by the various Ministries and adopted by the Council of Ministers, there is decree No. 4/3191 which regulates the working hours of seamen. This decree provides for a compulsory rest period of eight continuous hours for each twenty-four hours of work and prescribes the maximum number of working hours per day and per week.

#### II. JUDICIAL DECISION

*Recognition of Property Rights in respect of Reclaimed Swamp and Marsh Land*

Under Act No. 5516, an individual was, under specified conditions, recognized as the owner of swamp or marsh land reclaimed by him, but only on condition that he had previously obtained permission to undertake such reclamation.

The Council of State, by its decision of 22 May 1954, has ruled that such permission is not necessary.

#### III. INTERNATIONAL AGREEMENT

The National Assembly, by Act No. 6366, promulgated on 19 March 1954 (*Düstur* (Compilation of Laws) Vol. 34, p. 1567), has ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocol to that Convention.<sup>1</sup>

<sup>1</sup> See *Tearbook on Human Rights for 1950*, pp. 418-426; and *Tearbook on Human Rights for 1952*, pp. 411-412.



# ACT NO. 6334, OF 9 MARCH 1954, CONCERNING CERTAIN OFFENCES COMMITTED BY WAY OF PUBLICATION OR RADIO BROADCAST<sup>1</sup>

*Art. 1.* A penalty of six months' to three years' imprisonment and a heavy fine (1,000 to 10,000 Turkish pounds) shall be imposed on any person committing any of the following offences by publication in the press:

- (1) Any attack or slur on the honour, esteem or dignity of an individual.
- (2) The imputation to a person of any act likely to cause damage to his good name, his reputation, or his financial position.
- (3) The publication of details of a person's private or family life against his will.
- (4) The threat to commit any of the acts referred to in paragraphs 1 to 3.

Where the aforesaid offences are committed against a person holding public office, and because of such public office or of his duties, the penalty may be increased by one-third to one-half.

*Art. 2.* Prosecution for the offences defined in article 1 shall not depend upon a complaint being made (by the injured party).

The Public Prosecutor shall, however, obtain the written consent of the injured party before instituting proceedings.

If the injured party withdraws the complaint before the judgement becomes final, the proceedings shall be quashed.

The second and third paragraphs of the present article shall not apply to the offences of defamation, insult to a private person, public official or Head of

State, the imputation to a person of an act likely to expose that person to public contempt, or offences against morality, whether requiring authority, consent, petition or appeal for the institution of proceedings or evoking prosecution automatically.

*Art. 3.* A penalty of one to three years' imprisonment and a heavy fine (not less than 2,500 Turkish pounds) shall be imposed on any person publishing false information or news, or false documents, detrimental to the political and financial security and stability of the State, or causing a public disturbance and unduly arousing public opinion.

*Art. 4.* Where any of the offences defined in articles 1 and 3 of the present Act is committed a second time, the penalties shall be doubled.

*Art. 5.* The owner of the periodical, whether an individual or a body corporate, or where the owner is not punishable by law, the publisher shall be ordered by the court to pay a fine five times the amount of the fine imposed on the offender.

The penalty shall be imposed and the fine collected in accordance with the provisions of Act No. 6183<sup>2</sup> concerning the collection of public debts; in the case of a repetition of the offence, no account shall be taken of this fine.

*Art. 6.* Where the offences defined in articles 1 and 3 have been committed by radio broadcast or transmission, the offenders shall be punished in accordance with the provisions of the present Act.

*Art. 7.* The present Act shall enter into force on the date of its promulgation.<sup>3</sup>

*Art. 8.* The Council of Ministers shall ensure the application of the provisions of the present Act.

<sup>1</sup> This Act was published in *Official Gazette* No. 8660, dated 17 March 1954. French translation kindly furnished by Mr. İlhan Akipek, of the Faculty of Law, University of Ankara, Member of the Turkish United Nations Group for the Defence and Protection of Human Rights and Fundamental Freedoms. English translation from the French by the United Nations Secretariat.

<sup>2</sup> Act of 28 July 1953 (published in *Official Gazette* No. 8469, of 28 July 1953).

<sup>3</sup> 17 March 1954.



# UKRAINIAN SOVIET SOCIALIST REPUBLIC

## REPORT OF THE STATISTICAL BOARD OF THE UKRAINIAN SOVIET SOCIALIST REPUBLIC ON THE FULFILMENT OF THE STATE PLAN FOR THE DEVELOPMENT OF THE NATIONAL ECONOMY OF THE UKRAINIAN SOVIET SOCIALIST REPUBLIC IN 1954

### EXTRACTS<sup>1</sup>

In 1954, further improvement was achieved in the Ukrainian SSR as regards the material position and the cultural level of the people.

The real wages of manual and office workers increased, owing to the increase in monetary wages and the reduction in prices.

As a result of measures carried out in the second half of 1953 and in 1954 as regards state preparation of stocks and purchases of agricultural products and tax privileges, the income of collective farms and collective farmers rose appreciably. The financial position of the collective farms was improved. Larger sums stood to the credit of collective farms in the form of funds reserved for capital investment in the Agricultural Bank and in current accounts in the State Bank.

Owing to the rise in monetary income of manual and office workers and peasants, the people's contributions to savings funds increased.

In 1954, further progress was achieved in all branches of socialist culture.

As a result of the expansion of secondary education, the number of secondary general education schools (ten-year schools) increased by 444 by comparison with 1953, while the number of pupils in the eighth to the tenth grade in secondary schools increased by 96,000 as against 1953, and by 836,000 as against 1950.

In rural areas, the number of pupils in the eighth to the tenth grades increased by 57,000 as against 1953, and by 420,000 as against 1950.

In accordance with the planned transition from seven-year education to a general secondary education, in the capital of the Ukrainian Soviet Socialist Republic, in cities under the jurisdiction of the republic and in regional (oblastni) and large industrial centres of the republic, the number of pupils in the eighth to the tenth grade of the secondary schools increased

by 8 per cent in 1954. The number of pupils graduating from the ten-year secondary schools has more than doubled as compared with 1953.

The number of students in higher educational establishments (including correspondence course students) was 311,000, or 16 per cent more than in 1953. The number of students in technical and other specialized secondary education establishments (including correspondence course students) was 342,000, or 10 per cent more than in 1953. In 1954, over 100,000 young specialists graduated from higher and specialized secondary education establishments. The number of post-graduate students working in higher educational establishments and scientific institutions increased.

The number of students who, while continuing to work, took evening and correspondence courses at higher and specialized secondary educational establishments and at schools for the general education of young industrial and rural workers rose by 6 per cent as compared with 1953.

The total number of graduates of higher educational establishments working as specialists in the national economy increased by 8 per cent in 1954 as compared with 1953.

There was a further expansion of the network of libraries and clubs. In 1954 there were about 76,000 libraries of various types, containing a total of over 226,000,000 volumes. The number of cinema installations exceeded 9,000, over 400 more than in 1953.

In 1954, nearly one million children and adolescents stayed in pioneer camps, children's camps, children's sanatoria or excursion and tourist centres or spent the whole summer in the country in kindergartens, children's homes or creches.

During the past year, the network of hospitals, maternity homes, clinics and other medical institutions, and also of sanatoria and rest homes, was expanded. The number of beds in hospitals increased by more than 20 per cent as against 1950. The capacity of sanatoria and rest homes increased by 1,200 persons. The network of creches and kindergartens was expanded.

In 1954 there was continued improvement in the provision of public housing utilities to the population.

<sup>1</sup> Russian text received through the courtesy of the Permanent Mission of the Union of Soviet Socialist Republics to the United Nations, acting on behalf of the Ministry of Foreign Affairs of the Ukrainian Soviet Socialist Republic. Translation by the United Nations Secretariat.

The number of apartments supplied with gas in the cities of the Ukrainian Soviet Socialist Republic was 8 per cent higher than in 1953, the amount of gas supplied to subscribers was 13 per cent greater, and the volume of water supplied to consumers was 9 per cent larger. The production of electric power by communal power stations increased by 12 per cent....

State enterprises and republic undertakings, local councils, and also the population of the cities and

workers' settlements of the Ukrainian Soviet Socialist Republic, with the aid of State credits, in 1954 built housing with a total area of over two million square metres. In addition, over 80,000 new dwellings were built in rural areas.

In 1954, the allocations for repairs and maintenance of housing were greatly increased; considerable work was also carried out on paving and asphaltting city streets and squares and on planting in the populated centres of the Ukrainian Soviet Socialist Republic.

## ACT CONCERNING THE STATE BUDGET OF THE UKRAINIAN SOVIET SOCIALIST REPUBLIC FOR 1954

### EXTRACTS<sup>1</sup>

*Art. 3.* The total sum of 13,598,722,000 roubles, representing an increase of 1,063,575,000 roubles over the corresponding figure for 1953, shall be appropriated for social and cultural activities in the State Budget of the Ukrainian Soviet Socialist Republic for 1954.

Expenditure on the different branches of social and cultural activity shall be apportioned as follows:

(a) Education and culture: expenditure on primary, seven-year and secondary general education schools, technical and other specialized secondary education establishments; higher education institutions and

scientific and research establishments; workshop and factory apprenticeship schools, courses and other activities designed to raise the qualifications of workers, collective farm workers and engineering and technical workers; libraries, halls and homes for cultural activities, clubs, theatres, the press and other educational and cultural activities: a total of 7,822,891,000 roubles;

(b) Public health and physical culture: expenditure on hospitals, dispensaries, maternity homes, creches, sanatoria and other establishments for the medical care of the population; sport and physical culture: a total of 4,203,344,000 roubles;

(c) Social security and social insurance: expenditure on pensions and assistance for disabled workers and their families, the maintenance of homes for the disabled and other pensions: a total of 1,572,487,000 roubles.

<sup>1</sup> Russian text received through the courtesy of the Permanent Mission of the Union of Soviet Socialist Republics to the United Nations, acting on behalf of the Ministry of Foreign Affairs of the Ukrainian Soviet Socialist Republic. Translation by the United Nations Secretariat.

## UNION OF SOUTH AFRICA

### MAGISTRATES COURTS AMENDMENT ACT, 1954

Act No. 14 of 1954, assented to on 31 March 1954<sup>1</sup>

#### SUMMARY

This Act amends the Magistrates Courts Act, 1944 (No. 32 of 1944) in relation to the enforcement of judgements in cases of debt and also adds thereto a provision empowering a magistrate, with the approval of the Minister of Justice or any other minister of state

acting on his behalf, to summon one or two assessors to sit with him at any summary trial or at any trial on remittal by the Attorney-General. Such assessors must, in the magistrate's opinion, have "experience in the administration of justice or skill in any matter which may have to be considered at the trial". Such assessors shall have no voice in decisions on questions of law, including decisions on punishment to be inflicted. When the magistrate is joined by two assessors questions of fact are to be established by a majority of the three.

<sup>1</sup> Published in *Statutes of the Union of South Africa, 1954*. Text received through the courtesy of Dr. L. H. Wessels, Law Adviser, Department of Justice, Pretoria, government-appointed correspondent of the *Yearbook on Human Rights*. Summary by the United Nations Secretariat.

### CRIMINAL PROCEDURE AND JURORS AMENDMENT ACT, 1954

Act No. 21 of 1954, assented to on 4 June 1954<sup>1</sup>

#### SUMMARY

This Act amends the Criminal Procedure and Evidence Act, 1917 (No. 31 of 1917), the Female Jurors Act, 1931 (No. 20 of 1931) and the General Law Amendment Act, 1949 (No. 54 of 1949).

The Act lays down the means whereby and the times at which a person indicted for trial for an offence before a superior court (with some exceptions) may demand to be tried by a judge and a jury of nine, of whom not less than seven shall determine the verdict. The magistrate who commits any person for trial shall inform him of his right. The right does not apply to certain offences, including treason, sedition and public violence, which may be tried by a special criminal court without jury where it appears that the ends of justice are likely to be defeated if the trial should be held with a jury. The Minister of Justice may direct that an accused be tried by a judge without a jury if he is committed for trial before a provincial or local division of the Supreme Court upon an indictment charging him with having committed or attempted to commit certain offences.<sup>2</sup>

The Act provides that every European male person over twenty-five and under sixty-five who is a registered parliamentary voter in the Union and who is not exempted by law shall be qualified and liable to serve as a juror on any jury empanelled for any criminal trial within the jury district in which he resides. It is further provided that any woman, who, if she were a man, would be qualified to serve as a juror and could not claim exemption from such service, may be enrolled as a juror at her written request. Women jurors may serve only on juries consisting solely of women. (Women and juveniles may claim trial by such juries).

In a criminal case to be tried before a superior court without a jury, the judge may summon to his assistance to sit with him as assessor or assessors one or two persons having, in his opinion, "experience in the administration of justice or skill in any matter which may have to be considered at the trial". He is bound so to summon two assessors if the charge is one of having committed or attempted to commit certain specified crimes. Assessors shall have no voice in decisions on questions of law. When a judge is joined by two assessors, questions of fact are to be established by a majority of the three.

<sup>1</sup> Published in *Statutes of the Union of South Africa, 1954*. Text received through the courtesy of Dr. L. H. Wessels, Law Adviser, Department of Justice, Pretoria, government-appointed correspondent of the *Yearbook on Human Rights*. Summary by the United Nations Secretariat.

<sup>2</sup> This last-mentioned provision, which forms the content of section 215 *bis* of the Act of 1917 as amended in 1954, is

identical with section 216 (5) of the Act as amended in 1951: see *Yearbook on Human Rights for 1951*, p. 347.

NATIVES RESETTLEMENT ACT, 1954  
Act No. 19 of 1954 assented to on 4 June 1954<sup>1</sup>

SUMMARY

This Act establishes a Natives Resettlement Board with power to effect the removal of natives from certain areas in Johannesburg and their settlement elsewhere. "Native" is defined as meaning "Any person who is a member of an aboriginal race or tribe of Africa, and whenever there is doubt as to whether any person is a native, he shall be presumed to be a native, unless the contrary is proved."

Sections 25 and 26 of the Act read as follows:

"25. The board may, by notice in writing addressed or delivered to any native residing in a specified area, or posted up at or near the main entrance to the premises occupied by him, require that native to vacate the premises in which he resides, together with the members of his household, and to remove all property belonging to him or any member of his household from those premises, within a period stated in the notice, but ending not earlier than the last day of the month following that during which such notice is given: Provided that no native entitled to reside in the area under the jurisdiction of the council [the Council of the City of Johannesburg] shall be required to vacate any premises, unless—

"(a) In the case of a native residing in the township of Sophiatown, Martindale, Newclare or Pageview as described in the schedule to this Act, a house or other place of residence for himself and his household or (if he so elects) a right to occupy land on which he may provide for the housing needs of himself and his household; or

"(b) In the case of a native who, except for the members of his household, is the sole occupant (otherwise than as a lessee under a sub-lease) of a house which is situated elsewhere than in any of the said townships and has been approved under the by-laws or regulations of the local authority in whose area it is situated, a house or other place of residence for himself and his household or (if he so elects) a right to occupy land on which he may provide for the housing needs of himself and his household; or

"(c) In the case of any other native, a right to occupy land as aforesaid or a place of residence, is offered to him by the board and specified in the notice requiring him to vacate any such premises.

"26. (1) Whenever it is proved to the satisfaction of a magistrate by means of affidavits placed before him that any native or any member of his household has failed to vacate any premises in accordance with the requirements of a notice under section *twenty-five*, that magistrate may, after consultation with the

chairman of the board and the chairman of the non-European affairs committee of the council, if such consultation is considered necessary by that magistrate, issue such orders and give such instructions and confer such authority as he may deem necessary—

"(a) To effect the immediate removal of such native or member of his household from those premises;

"(b) To effect the transfer of such native or member of his household to the house, place of residence or land offered by the board and specified in such notice;

"(c) To ensure the demolition and removal from such premises of all buildings and structures which may have been erected thereon, and of any property belonging to that native or any member of his household in so far as the demolition or removal thereof may be considered necessary:

"Provided that—

"(i) Before the magistrate issues any order as aforesaid, he shall be satisfied on affidavit that a notice of the intention to apply for such an order, and of the time and place at which the application will be made, in both official languages of the Union and in a native language commonly used by natives in the specified area in question has, not less than three days prior to the making of the application, been served on the person concerned or where such service cannot be effected, has been posted up in a prominent place on the said premises;

"(ii) Such person shall be entitled to appear or to be suitably represented before such magistrate by an advocate or attorney and to reply either orally or by affidavit or through his representative to the allegations set out in the said affidavits.

"(2) Any member of the police force or any officer in the service of the council or any officer or person in the service of the board may take any steps which may be necessary for carrying out any instruction given to him or in connection with the exercise of any authority conferred upon him under sub-section (1), and no action shall lie in respect of any loss or damage which may be sustained in consequence of the *bona fide* carrying out of any such instruction or exercise of any such authority.

"(3) Any expenditure incurred by the board in giving effect to the provisions of paragraph (a), (b) or (c) of sub-section (1) shall be met from the funds of the board."

The Board is accorded certain powers to acquire and develop or have developed land in order to enable it so to make available for occupation land or residences.

<sup>1</sup> Published in *Statutes of the Union of South Africa, 1954*. Summary by the United Nations Secretariat.

Section 12(1)(f) empowers the Board:

"with the approval of the Minister, and subject to such conditions as he may in consultation with the Minister of Finance, determine—

"(i) To build houses or other structures on land belonging to the board elsewhere than in a specified area, and to grant leases over such land or houses or to dispose of the right of occupation of such houses to natives removed from such an area;

"(ii) To make available any such land for lease by such natives for the purpose of enabling them, subject to the approval of the board and on such conditions as it may deem fit, to provide for their own housing requirements;

"(iii) To grant loans or advance money or make available materials for any purpose which in the opinion of the board will contribute towards the attainment of the object for which the board is established;"

Section 23 of the Act provides:

"23. (1) If within three months after the date on which any land registered in the name of a native is acquired by the board under this Act, that native in writing advises the Minister that he desires to acquire ownership in other land, the South African Native Trust (hereinafter referred to as the Trust) shall, notwithstanding anything contained in the Native Trust and Land Act, 1936 (Act No. 18 of 1936), but subject to the provisions of sub-sections (2) and (3)—

"(a) Make available for purchase by that native such land belonging to the Trust as it may determine

and afford him such assistance as it may deem fit in connection with the purchase of such land; or

"(b) If the Trust is unable to make available such land or to reach agreement with the native concerned as to the purchase price or the other conditions of sale of any such land which the Trust is able to make available, afford that native such assistance as it may deem fit in connection with the purchase of any land (not being land belonging to the Trust) in a released area as defined in the said Act which that native may be able to acquire.

"(2) No assistance shall be granted to any native under sub-section (1) except in accordance with and subject to the provisions of the aforesaid Act.

"(3) Any land made available under sub-section (1) shall either be land comprising an economic agricultural unit or land in a village or settlement established by the Trust, and the conditions of title to any such land shall conform to the conditions generally applicable in relation to land of the same class as that made available in the area in which such land is situated."

With the approval of the Minister of Native Affairs, the Board is empowered to expropriate land either in a specified area or elsewhere, and if the Board and the former owner of the land cannot agree on the amount of compensation to be paid the amount is to be fixed by two arbitrators, one to be appointed by each party, and, failing agreement between them, by a referee appointed by the arbitrators or by the Minister if not so appointed. Certain bases for the determination of the amount of compensation are laid down in the Act.

## RIOTOUS ASSEMBLIES AND SUPPRESSION OF COMMUNISM AMENDMENT ACT, 1954

Act No. 15 of 1954 assented to on 5 April 1954<sup>1</sup>

### SUMMARY

This Act amends the Riotous Assemblies and Criminal Law Amendment Act, 1914 (Act No. 27 of 1914) and the Suppression of Communism Act, 1950 (Act No. 44 of 1950).

Sub-sections 4 and 13 of Section 1 of the former Act provide in their amended form that (i) whenever, in the opinion of the appropriate Minister, there is reason to apprehend that feelings of hostility would be engendered between the European inhabitants of the Union on the one hand and any other section of the inhabitants on the other (a) by the assembly of any public gathering during any period in any public

place within any area or on any particular day of the week or (b) if a particular person were to attend any such gathering, the Minister may prohibit the assembly of such a gathering, or he may by notice under his hand prohibit the particular person from attending any public gathering in any place to which the public has access within an area and during a period specified in the notice; and (ii) if any person receiving such a notice requests the Minister in writing to furnish him with the reasons for such notice, and with a statement of the information which induced him to issue the notice, the Minister shall furnish that person with a statement in writing setting forth his reasons for the notice and so much of the information which induced him to issue the notice as can, in his opinion, be disclosed without detriment to public policy.

The Act amends the Suppression of Communism

<sup>1</sup> Published in *Statutes of the Union of South Africa, 1954*. Text received through the courtesy of Dr. L. H. Wessels, Law Adviser, Department of Justice, Pretoria, government-appointed correspondent of the *Yearbook on Human Rights*. Summary by the United Nations Secretariat.

Act, 1950,<sup>1</sup> as amended by the Suppression of Communism Amendment Act, 1951,<sup>2</sup> in the following respects:

(i) Section 5, as amended in 1951,<sup>3</sup> was further amended:

“(a) by the insertion in sub-section (1) after the word ‘writing’ of the words ‘addressed and delivered or tendered to the person concerned’;

“(b) by the substitution for paragraph (e) of sub-section (1) of the following paragraph:

“(e) not to attend any gathering in any place within an area and during a period specified in the notice’; and

“(c) by the deletion of paragraph (b) of sub-section (1) *bis*.”

(ii) A new section 5 *bis* was inserted, sub-section (1) of which reads:

“5 *bis*. (1) No person in respect of whom a notice has been issued in terms of paragraph (a) of sub-section (1) *bis* of section *five*<sup>4</sup> and no person whose name appears on any list in the custody of the officer referred to in section *eight*<sup>5</sup> or who has been convicted of an offence under section *eleven*<sup>6</sup> or is a communist, whether he has been nominated for election before or after the date of commencement of the Riotous Assemblies and Suppression of Communism Amendment Act, 1954, shall be capable of being chosen and, if he is chosen, of sitting as a senator or as a member of the House of Assembly or of a provincial council or the Legislative Assembly of the territory of South-West Africa unless he has, prior to his election, obtained the written approval of the Minister or the leave of the Senate, in the case of a person seeking election as a senator, or of the House of Assembly in any other case.”

(iii) A new section 8 *bis* was inserted, sub-section (1) of which reads:

“8 *bis*. (1) It shall in any prosecution under this Act or in any civil proceedings arising from the application of the provisions of this Act, be presumed, until the contrary is proved, that the name of any person appearing on any list compiled under sub-section (10) of section *four*<sup>7</sup> or sub-section (2) of section *seven*<sup>8</sup> has been correctly included in that list: Provided that in any such prosecution or civil proceedings instituted after the expiration of a period of twelve months from the date of commencement of the

Riotous Assemblies and Suppression of Communism Amendment Act, 1954, or the date upon which the name of the person concerned was included in the list, whichever be the later date, no person shall question the correctness of the inclusion in the list of the name of the said person unless proceedings for the removal from the list of the name of the said person have been instituted by him within the said period of twelve months and such proceedings have not been disposed of.”

(iv) Section 9<sup>9</sup> was amended:

“(a) by the substitution for paragraph (a) of the following paragraph:

“(a) by the assembly of a particular gathering in any place within the Union or of any gathering during any period in any place within any area or on any particular day of the week; or’;

“(b) by the substitution for the words ‘that gathering in any place within the Union’ of the words ‘such a gathering’; and

“(c) by the addition thereto of the following sub-section, the existing section becoming sub-section (1):

“(2) If any person to whom a notice has been delivered or tendered under sub-section (1) requests the Minister in writing to furnish him with the reasons for such notice and with a statement of the information which induced the Minister to issue such notice, the Minister shall furnish such person with a statement in writing setting forth his reasons for such notice and so much of the information which induced the Minister to issue the notice as can, in his opinion, be disclosed without detriment to public policy.”

(v) A new sub-section (1) *bis* was inserted in section 10:<sup>9</sup>

“(1) *bis*. If any person to whom a notice has been delivered or tendered under sub-section (1) requests the Minister in writing to furnish him with the reasons for such notice, and with a statement of the information which induced the Minister to issue such notice, the Minister shall furnish such person with a statement in writing setting forth his reasons for such notice and so much of the information which induced the Minister to issue the notice as can, in his opinion, be disclosed without detriment to public policy.”

(vi) Section 11<sup>10</sup> was amended:

“(a) by the insertion after paragraph (f) of the following new paragraph:

“(f) *bis*. while being incapable in terms of section *five bis* of being chosen as a senator or as a member of the House of Assembly or of a provincial council

<sup>1</sup> See *Yearbook on Human Rights for 1950*, pp. 300–306.

<sup>2</sup> See *Yearbook on Human Rights for 1951*, pp. 347–350.

<sup>3</sup> See *Yearbook on Human Rights for 1950*, pp. 303–4 and *Yearbook on Human Rights for 1951* p. 349.

<sup>4</sup> See *Yearbook on Human Rights for 1951*, p. 349.

<sup>5</sup> See *Yearbook on Human Rights for 1950*, pp. 304–5.

<sup>6</sup> See *Yearbook on Human Rights for 1950*, p. 305.

<sup>7</sup> See *Yearbook on Human Rights for 1951*, p. 348.

<sup>8</sup> See *Yearbook on Human Rights for 1950*, p. 304, and *Yearbook on Human Rights for 1951*, p. 349.

<sup>9</sup> See *Yearbook on Human Rights for 1950*, p. 305.

<sup>10</sup> See *Yearbook on Human Rights for 1950*, pp. 305–6.

or the Legislative Assembly of South-West Africa, accepts nomination for election as a senator or as such a member;'

"(b) by the insertion after paragraph (g) of the following new paragraph:

'(g) *bis.* at any gathering reproduces by mechanical means a speech or statement made at any time by a person who is in terms of a notice under paragraph (e) of sub-section (1) of section *five* or section *nine* prohibited from attending that gathering;'

"(c) by the substitution in paragraph (ii) for the expression '(f), (g)' of the expression '(f), (f) *bis.* (g), (g) *bis.*'"

(vii) Section 12, as amended in 1951,<sup>1</sup> was further amended:

"(a) by the addition to sub-section (3) of the following words:

'and no person shall be convicted of an offence under paragraph (g) *bis* of section *eleven* if he satisfies the court that he had no knowledge of the fact that the person whose speech or statement he is alleged to have reproduced at any gathering was prohibited from attending that gathering under paragraph (e) of sub-section (1) of section *five* or section *nine* and that before he thus reproduced the said speech or statement he took all reasonable steps to ascertain whether or not the said person was so prohibited;'

"(b) by the addition thereto of the following new sub-sections:

'(4) In any prosecution under this Act or in any civil proceedings arising from the application of the provisions of this Act, any document, book, record, pamphlet or other publication or written instrument—

'(a) which is proved to have been found in or removed from the possession, custody or control of the accused or any party to the proceedings or of any person who was at any time before or after the commencement of this Act an office-bearer or officer of the organization of which the accused or the said party is alleged to be or to have been an office-bearer, officer, member or active supporter and which has been declared an unlawful organization; or

'(b) which is proved to have been found in or removed from any office or other premises occupied or used at any time before or after the commencement of this Act by the organization of which the accused or the said party is alleged to be or to have

been an office-bearer, officer, member or active supporter and which has been declared an unlawful organization, or by a person in his capacity as an office-bearer or officer of that organization; or

'(c) which on the face thereof has been compiled, kept, maintained, used, issued or published by or on behalf of the organization of which the accused or the said party is alleged to be or to have been an office-bearer, officer, member or active supporter and which has been declared an unlawful organization, and any photostatic copy of any document, book, record, pamphlet, or other publication or written instrument referred to in paragraph (a), (b) or (c) shall be admissible in evidence against the accused or, as the case may be, the said party to the proceedings as *prima facie* proof of the contents thereof.

'(5) Any list or portion of a list certified by an officer, who certifies that he has been designated by the Minister under section *eight* to keep in his custody the lists compiled under sub-section (10) of section *four* and sub-section (2) of section *seven*, to be a list or portion of a list in his custody under section *eight*, shall on its mere production in any prosecution under this Act or in any civil proceedings arising from the application of the provisions of this Act, be admissible in evidence as *prima facie* proof of the contents thereof."

(viii) The words "by birth or descent" were inserted after "South African citizen" in Section 14.<sup>2</sup>

(ix) Section 11 of the Act of 1954 provides: "Any notice issued prior to the date of commencement of this Act under sub-section (4) of section *one* of the Riotous Assemblies Act or section *nine* of the principal Act, including any notice which has prior to the said date been declared invalid or null and void, but excluding any notice which has expired by effluxion of time, shall for all purposes, with effect from the date of commencement of this Act, be deemed to have been issued or re-issued under the relevant section as amended by paragraph (c) of section *two* or paragraph (c) of section *six*, as the case may be, of this Act."<sup>3</sup>

<sup>2</sup> See *Yearbook on Human Rights for 1950*, p. 306.

<sup>3</sup> Section 2 of the Act of 1954 amended section 1 of the Riotous Assemblies Act, as described in the text above. Section 6 of the Act of 1954 amended section 9 of the Suppression of Communism Act, 1950, in the manner described above.

In *R. v. Ngwenela*, 1954 (1) S.A. 123 (A.D.), decided before the adoption of the Riotous Assemblies and Suppression of Communism Amendment Act, 1954, the Appellate Division of the Supreme Court of South Africa had held that before the Minister of Justice exercised his powers under section 9 of the Suppression of Communism Act, 1950, as amended, the person affected was entitled to be given an opportunity of being heard. The Court had allowed an appeal against a conviction under the Act on the grounds that no such opportunity had been given to the person convicted.

<sup>1</sup> See *Yearbook on Human Rights for 1950*, p. 306, and *Yearbook on Human Rights for 1951*, p. 350.



# UNION OF SOVIET SOCIALIST REPUBLICS

## REPORT OF THE CENTRAL STATISTICAL BOARD OF THE COUNCIL OF MINISTERS OF THE UNION OF SOVIET SOCIALIST REPUBLICS ON THE FULFILMENT OF THE STATE PLAN FOR THE DEVELOPMENT OF THE NATIONAL ECONOMY OF THE UNION OF SOVIET SOCIALIST REPUBLICS FOR 1954

### EXTRACTS<sup>1</sup>

The amount of capital investment in construction for cultural and social purposes increased by 30 per cent in 1954 as compared with 1953.

The number of manual and office workers in the national economy of the USSR stood at about 47,000,000 at the end of 1954 and exceeded the number at the end of 1953 by 2,000,000. In industry, agriculture, construction, and in transport the number of manual and office workers increased by 1,700,000. The number of manual and office workers in educational, scientific-research and medical institutes, in trade, in catering and in the municipal services also increased. In some institutions there was a decrease in the number of workers as a result of the transfer of administrative staff to production.

In 1954, as in previous years, there was no unemployment in the USSR.

During the past year more than 700,000 young skilled workers completed their training in factory and mining schools in vocational, railway, mining and special vocational institutes, in vocational institutes for the mechanization of agriculture and in institutes for the mechanization of agriculture and were directed to work in industry, building, transport and agriculture. More than 340,000 of these became mechanics on farms.

Seven million, seven hundred thousand manual and office workers received training and improved their skills through individual and group instruction in 1954.

As a result of more ample technical equipment for labour and of improved skill among the workers, the productivity of labour in industry rose by 7 per cent, and in construction by 8 per cent, in 1954 as compared with 1953.

In 1954, a further improvement was achieved in the material well-being and cultural level of the people. The national income of the USSR in 1954 increased by 2 per cent by comparison with 1953. The direct benefit derived by the population from the reduction

in state retail prices for consumer goods in 1954 amounted to 20,000 million roubles for the year.

The rise in the national income, the reduction of state retail prices and the measures carried out by Party and Government in the agricultural sphere have led to a further increase in the income of manual and office workers and of peasants.

Taking into account the increase in monetary wages and the reduction in prices,<sup>2</sup> the real wages of manual and office workers increased by 5 per cent during the year.

As a result of measures carried out in the second half of 1953 and in 1954 in the sphere of compulsory deliveries to, and purchases by, the State, of agricultural products and the granting of tax privileges, the income of collective farms and farmers rose considerably. The financial position of collective farms was strengthened. In 1954, sums standing to the credit of collective farms in the form of "indivisible" funds in the Agricultural Bank increased by 35 per cent and those in current accounts in the State Bank by 78 per cent.

In the past year, as in previous years, the population received from public funds aid and allowances under the social insurance schema for manual and office workers, pensions from the social welfare fund, allowances for mothers of large families and for single mothers, students' grants, free medical aid, accommodation in sanatoria and rest homes free of charge or at reduced rates, free instruction and professional instruction and a number of other payments and

<sup>2</sup> In this connexion attention is drawn to a decree of 31 March 1954 concerning a new reduction in governmental retail prices of foodstuffs and industrial goods. Prices of, *inter alia*, the following categories of goods have been reduced: bread, flour and macaroni by 5 to 15 per cent; coffee, tea and salt by 10 to 20 per cent; linens, clothing, shoes and millinery by 7 to 20 per cent; gasoline by 44 1/2 per cent; building materials by 10 to 30 per cent; pharmaceutical and sanitary products by 10 to 15 per cent; and soap and cosmetics by 10 to 20 per cent. Similarly prices in restaurants and other popular eating places have been reduced.

<sup>1</sup> Russian text received through the courtesy of the Permanent Mission of the Union of Soviet Socialist Republics. Translation by the United Nations Secretariat.

Retail prices of raw materials used for the manufacture of some of the above-mentioned products are to be reduced by 10 per cent.



privileges. All manual and office workers in the USSR received at least a fortnight's holiday with pay, and more in the case of workers in a number of occupations. In 1954, the total sum expended on the above-mentioned payments and privileges for the population amounted to 146,000 million roubles.

Taking into account the increase in monetary wages, the reduction of prices for consumer goods, the increase in monetary income and in income in kind of the peasants and the increase in payments and privileges at the State's expense, the total income of manual and office workers and of peasants rose by 2 per cent in 1954 in comparative prices as compared with 1953.

As a result of the increased monetary income of manual and office workers and of peasants, deposits in the savings bank increased by almost 10,000 million roubles during the past year.

In 1954 further successes were achieved in all fields of socialist culture.

As regards the expansion of secondary education, the number of pupils attending the eighth to the tenth grades in secondary schools increased by 756,000 compared with 1953 and by 4,003,000 compared with 1950. The number of students in the eighth to the tenth year grades in schools in rural areas increased by 339,000 compared with 1953 and by 1,644,000 compared with 1950. In accordance with the planned transition from seven-year education to a general secondary education in the capitals of the Republics, in towns under the jurisdiction of the Republics and in regional (oblast), territorial (krai) and large industrial centres, the number of pupils in the eighth to the tenth grades in the secondary schools of those towns increased by 12 per cent. The number of pupils graduating from the tenth grades increased by 76 per cent compared with 1953.

The number of students in higher educational establishments (including correspondence course students) was 1,732,000, or 170,000 more than in 1953. The number of students in technical and other special secondary educational establishments (including correspondence course students) was about 1,790,000, or 144,000 more than in 1953. In 1954, over 560,000 young specialists graduated from higher and special secondary educational establishments. The number of post-graduate students working at higher educational establishments and scientific institutions also increased.

The number of students working without interruption of production in evening and correspondence

classes at higher and special secondary educational establishments and at schools for the general education of industrial and rural youth was 3 million in 1954, an increase of 8 per cent as compared with 1953.

The total number of graduates of higher educational establishments and secondary technical schools engaged as specialists in the national economy was 9 per cent higher in 1954 than in 1953.

The number of libraries and clubs also increased. In 1954 there were about 390,000 libraries of all types, containing 1,200 million volumes, in the USSR. The number of cinema installations was 54,000 which was an increase of more than 2,000 as compared with 1953 and exceeded the target set by the five-year plan for 1955.

In the summer of 1954, more than 5,500,000 children and adolescents stayed in pioneer camps, children's sanatoria or excursion and tourist centres or spent the summer in the country in organized groups from their kindergartens, children's homes or creches.

1954 saw a further expansion of hospitals, maternity homes, clinics and other medical institutions, as well as of sanatoria and rest homes. In the same year the number of beds increased by more than 20 per cent by comparison with 1950; this means that the target set by the fifth five-year plan for the increase in beds was carried out in advance of the schedule—i.e., in four years. The number of places in sanatoria and rest homes increased by almost 8,000 in 1954 over the number in 1953. The number of creches and of kindergartens also increased. The number of physicians increased by more than 10,000 compared with 1953. The output of medicines, medical equipment and instruments increased by 19 per cent in 1954 by comparison with 1953.

In 1954, work continued on the planning of towns, settlements and rural centres, the construction of communal undertakings, water supply and drainage, baths, laundries, hotels and homes for collective farm workers, the extension of tramcar, trolley-bus and omnibus services and the installation of gas and heating in dwellings.

Capital investment in government housing projects increased by 19 per cent in 1954 as compared with 1953. Government undertakings, institutes, local Soviets and the population of towns and workers' settlements, the latter with the help of government credits, built dwelling houses with a total area of more than 32,000,000 square metres in 1954. In rural areas, 470,000 new dwelling houses were constructed.

# UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

## THE RIGHT TO EDUCATION IN THE UNITED KINGDOM

### ILLUSTRATED BY THE DEVELOPMENT OF THE PRIMARY SCHOOL IN ENGLAND AND WALES<sup>1</sup>

*Note.* It has not been possible within the available limits to extend this account to describe the developments of post-primary (or secondary) education or of further education (in technical colleges, universities and elsewhere) in England and Wales, or to give any account of the different developments in Scotland and Northern Ireland.

#### 1. THE DEVELOPMENT OF ELEMENTARY EDUCATION UP TO 1870

The notion that Englishmen and Englishwomen have a right to education is of comparatively recent growth. It would be anachronistic to expect to find guarantees upon such a subject in any of the great historic statements of the rights of subjects of the English Crown from Magna Carta (A.D. 1215) to the Bill of Rights (1689) or to the Reform Act of 1832. Before the nineteenth century, neither custom, practice nor political philosophy suggested that there ever had been or ever could be such a right. "Right" in this context may be defined as the Oxford English Dictionary defines it—as "a justifiable claim on legal or moral grounds" or as "a legal, equitable, or moral title or claim to the possession of property or authority, the enjoyment of privileges or immunities, etc.", or as "that which justly accrues or falls to any one; what one may properly claim; one's due".

The British were jealous of their political and personal rights, but it would never have occurred to them that their children possessed any rights to education. In the little-developed machinery of government there could be no question of such rights, being enforceable against the State or against parents.

The emphasis, to which the Christian religion gave its strongest support, was all upon duties and very little upon rights. Parents had a duty towards their children, and a part of this duty was to provide for their proper education. When, towards the end of the eighteenth century, speculation about the nature and limits of political and social life had become of more general interest, the prevalent philosophy, far from favouring the notion that men had natural rights, tended on the contrary to pour scorn upon such an idea. Despite the spread of the doctrine of natural

rights after the American Declaration of Independence (1776) and the work of the French Constituent Assembly of 1791, the utilitarian philosophy then rising in favour in Great Britain would have none of it. To talk of "natural and imprescriptible rights," said Jeremy Bentham, was not merely "rhetorical nonsense", but "nonsense upon stilts". For Bentham and his followers, all "rights" are the creation of law, and the stand he took upon this position was not merely consonant with the jurisprudence of his own time: it has since lost nothing in respect, for it remains today as solidly established as ever in English law. Thomas Paine, the most vigorous and ardent champion of the theoretical rights of man, in his propaganda volume on behalf of the principles of the French revolution, *The Rights of Man* (1791-92) did, it is true, affirm that "a nation under a well-regulated government should permit none to remain uninstructed", but he did not suggest that the State should do more than compel parents to pay their children's school fees, to remit taxes as a set-off to fees, or, exceptionally, and only in needy cases, to make a grant from public funds to the indigent parent. New forces were at work which compelled fresh thought upon the problem. Men of the generation which succeeded the outbreak of the French Revolution were cruelly tried by a long war and by yet longer economic distress, and they were above all perplexed by the unforeseen consequences of a sudden and unprecedented rise in the population which shattered established economic routines and created appalling problems of social welfare for which no precedent provided any solution. The traditional, customary routine of life was forcibly jolted upon new paths. After the bitter and barely successful struggle to re-shape the parliamentary system which culminated in the Reform Act of 1832, the minds of more radical reformers turned upon the problem of public education. The "philosophical radicals", as the followers of Jeremy Bentham were called, were prepared to create in practice a legal right to education which was designed to remedy current evils

<sup>1</sup> This statement was prepared by the Secretary of the United Kingdom National Commission for UNESCO and was received through the courtesy of the Permanent Mission of the United Kingdom to the United Nations.

rather than to give reality to any abstract theoretical speculation about the rights of man. In 1833 one of their number, J. A. Roebuck, moved a resolution in the House of Commons pledging Parliament "to devise a means for the universal and national education of the whole people". So sweeping and revolutionary a proposal was doomed to failure. It ran counter to the unquestioning prevailing reliance upon individualism, and furthermore it excited alarm by its proposal that the State should intervene in a sphere of deep concern to religious bodies of all denominations; the Church of England not merely was by far the greatest of these, but was able to wield uniquely great political power as well. Both respect for individual self-determination and for religious principles commanded the unquestioning loyalty of the great majority of Englishmen, and any proposals for a change in public education throughout the nineteenth century and beyond were doomed to fail if they seemed openly to flout or to impugn either of these fundamental principles. The need to conciliate the churches arose not on doctrinal grounds alone, but because of the very pertinent fact that it was largely through them that the British public were putting forth a mighty effort, by private charitable donations, to expand the inherited system of voluntary schools which had been rendered totally inadequate by the enormous rise in the birth rate.

Barely a fortnight after Roebuck's motion in August 1833, a small start was nevertheless made to a movement which has since constantly grown in force. In that year, for the first time, the House of Commons voted public funds for building schools. The sums were small (£20,000 for England and Wales; £10,000 for Scotland); their disbursement was entrusted in England and Wales to the two voluntary societies, the National Society for promoting the Education of the Poor in the Principles of the Established Church throughout England and Wales (1811) and the British and Foreign Schools Society (1808). The last-named society was formed by members of the dissenting churches favouring undenominational education. A precedent for such action existed in Ireland, where £30,000 had been found annually for similar purposes. A condition of the payments was that at least equivalent "matching grants" would be forthcoming from private charitable contributions. In practice, these state grants were annually renewed and soon much increased. The practice of making grants-in-aid from public funds to assist those already engaged in the task of education continues to this day to be the principle upon which the public education of the people of Great Britain is based.

In the same spirit of attempting to reform existing evils rather than to enforce any doctrinaire system of human rights, the Government was soon led to begin to regulate and restrict the employment of children in factories (1833) and to ensure that they should receive two hours' schooling a day. In that year the first H.M. inspectors of factories were appointed

to ensure that the Act was obeyed. Later (1860), similar regulations were made to limit the labour of children in mines and to see that they also had some part-time elementary instruction. But these regulations often had little effect on education, because in many places there were no schools for the children to attend.

Many volumes have been devoted to the description of the great ferment of opinion excited by the question whether public provision should be made for the education of English children and to the effort to enumerate and to assess the various forces and influences by which it was ultimately chiefly directed, and it is impossible here to do more than sketch the story in very broad outline.

Despite the tremendous efforts of the would-be reformers, the voluntary principle survived. The famous six-point charter or demand for fundamental rights put out by working-class spokesmen in 1838 did not include public education as an elementary requirement for the British people. The assertion that "public education ought to be a *right*" was, however, made by the Chartist, Lovett, in 1840, and no doubt mistrusted accordingly, because the Chartists were feared as a party of revolt and possible violence. The leaders of political and social opinion in the United Kingdom had vivid memories of Jacobinism and its fruits, and reacted with natural apprehension against any doctrinaire advocacy of wide-sweeping change. The example set by other countries in providing systems of public education was also often regarded with suspicion. It was urged that they had not had time to prove their value; that they were not so successful as their admirers believed; and above all that they were compulsory, were administered in the interest of governments and were in consequence inevitably hostile to freedom. This enduring suspicion of government control has successfully ensured that the day-to-day operation of the public educational system of the United Kingdom remains to this day in the hands of voluntary societies and popularly elected local government bodies which, however, have no legally guaranteed monopoly, but at least have never been faced with competition from schools provided by the central Government. It is not part of the duties of the Minister of Education for England and Wales to employ teachers, prescribe curricula or provide textbooks for use in the primary, secondary or technical schools and universities of the British Isles.<sup>1</sup> Such influence as the Government has exerted has been through the government inspectors of schools first appointed in 1840 by the Committee of the Privy Council on Education, a committee of four Ministers of the Crown established in 1839. Their primary task was to ensure as far as possible that the public funds given to the voluntary societies were

<sup>1</sup> The central Government does, however, provide certain schools for the children of men serving in the armed forces (mainly abroad) and the Home Office approved schools for juvenile offenders.

well spent. For sixty years, until it was superseded by the Board of Education in 1899 (the Board in turn becoming the Ministry of Education in 1944), it slowly shaped the emerging system of public education of England and Wales. Much of its effectiveness and early success in facing tremendous difficulties was due to its first Secretary, Dr. James Kay, who became Sir James Kay-Shuttleworth in 1842 and who has with justice been described as the founder of English popular education.

By 1858 it was estimated that out of a total number of 2,655,767 children, only about 120,305, or 4.5 per cent, were not attending any school. One in every 7.7 persons in England and Wales was a pupil attending school. In other European countries Prussia showed a better figure at 6.27. For Holland the figure was one in 8.11 and in France one in 9. It was also stated in the House of Commons that between 1831 and 1861 the circulation of newspapers in the United Kingdom had increased from 39 million to 546 million sheets per annum. At about the same time Mr. John Cassell was selling between 25 million and 30 million copies of his penny publications every year. The mass of the British people was gradually becoming educated, but great dissatisfaction at their slow progress persisted. In 1858 a Royal Commission was appointed "to inquire into the state of public education in England and to consider and report what measures, if any, are required for the extension of sound and cheap elementary instruction to all classes of the people". The Commission's report in 1861 was the first comprehensive survey of the actual amount and quality of elementary education in England and Wales, and the picture it gave was sufficiently disquieting to occasion some immediate reforms. Its more enduring title to fame lies in the impetus it gave to the further attention to public education which led to the Public Education Act of 1870.

Slowly, public opinion was moving towards the realization that state intervention on an increasing scale was essential. The best thinking on the subject was resumed after his retirement by Sir James Kay-Shuttleworth in 1853, who wrote, he said, "worn with work, scathed by former controversies and slowly restored to life after four years of suffering". Examining the responsibility of the State for public education, he stated clearly that "the training of children of free citizens of whatever class is a duty primarily devolving upon their parents". Only "if parents and religious congregations fail to educate the children of the poor, a Christian State may aid them to perform this duty in such manner as domestic piety and religious faith may determine".<sup>1</sup>

The evident fact that many parents were unwilling or unable to fulfil their natural duty was patent for all to see in the horrifying prevalence of vice, violence,

miser and distress, more especially in the foetid slums of the great cities. It was not merely that large numbers of the children of the poorest parents, or the destitute and homeless orphans and outcasts, were unable to pay the school fees, which might be anything up to eightpence a week, for their schooling. The main trouble arose because attendance at school deprived the parents of the wages the child might have earned had he or she been at work. It could not plausibly be asserted that the majority of the working class were unable to afford the minimal charges at the church and charity schools, at a time when they paid each year some £57 million for their beer, spirits, snuff and tobacco.<sup>2</sup>

Far too many children were without education, and no amount of sermons upon parental duty would have rescued them. Despite, therefore, orthodox opinion such as that voiced by the economist Nassau Senior ("I detest paternal despotisms which try to supply their subjects with self-regarding virtues, to make men by law sober, frugal or orthodox"), the State had to step in to relieve a desperate situation.<sup>3</sup>

Senior himself, a member of the Royal Commission of 1858, modified his general principles and became a vigorous advocate for state action in this field. He founded his case upon the need for protection—protection in the first place of the child and in the second place of society against the "dangers of a vicious and uneducated population. Unless," he held, "the community can and will compel the parent to feed the child, or to educate the child, the community must do so."<sup>4</sup>

Sir James Kay-Shuttleworth, who knew more about the matter than anybody else, gave a terrifying account of conditions in some of the large towns, where "an uncivilised, ignorant population supporting their own sensual excesses in some degree by the too early labour of their children" were inevitably indifferent or opposed to education.<sup>5</sup> More positively, it was increasingly realized that Great Britain's rapidly developing industry and commerce called for literate and educated workers.

The paramount need for action at last won sufficient common agreement to make possible the Education Act of 1870.

## 2. FROM THE EDUCATION ACT OF 1870 TO 1944

The main purpose of the Act was to ensure that sufficient elementary schools should be provided where they did not already exist and to make proper arrangements for their management. The Act did not impose new legal obligations upon parents or

<sup>2</sup> Porter, G. R., in a paper read at the British Association meeting in Edinburgh, 1850.

<sup>3</sup> Senior, Nassau W., *Suggestions on Popular Education*, 1861, p. 6.

<sup>4</sup> *Ibid.*, p. 1.

<sup>5</sup> Kay-Shuttleworth, Sir James, *Four Periods of Public Education*, 1862, p. 177.

<sup>1</sup> Sir James Kay-Shuttleworth, *Public Education as affected by the Minutes of the Committee of Privy Council from 1846 to 1852*, 1853, pp. 286–287.

confer upon children any "right to education". There was not then and there never has since been created any legal obligation upon parents to send a child to school if satisfactory education was otherwise provided. In Great Britain, in marked contrast to the situation in many other countries, the parent has, and has always had, a right to educate his own child in his own manner provided that the education given to the child is of a satisfactory type. The keynote of the 1870 Act brings out clearly this basic position. Section 5 of the Act provides:

"There shall be provided for every school district a sufficient amount of accommodation in public elementary schools (as hereinafter defined) available for all the children resident in such district for whose elementary education efficient and suitable provision is not otherwise made, and where there is an insufficient amount of such accommodation, in this Act referred to as 'public school accommodation,' the deficiency shall be supplied in manner provided by this Act."

Public assistance to provide schools would not be invoked except where there was actually deficiency. Section 6 of the Act prescribes as follows:

"Where the Education Department, in the manner provided by this Act, are satisfied and have given public notice that there is an insufficient amount of public school accommodation for any school district, and the deficiency is not supplied as hereinafter required, a school board shall be formed for such district and shall supply such deficiency, and in case of default by the school board the Education Department shall cause the duty of such board to be performed in manner provided by this Act."

It was the aim of the Act of 1870 as expressed by Forster, its sponsor, "to cover the country with good schools, and get the parents to send their children to those schools" and the school boards which were set up to remedy deficiencies in the school provision were empowered to make by-laws requiring the attendance at school of children up to the age of thirteen. The proposal to make attendance compulsory was the subject of prolonged debate. Forster had to defend it against the charge of being "un-English" and in the course of a long speech, Gladstone regretted the necessity for a measure of compulsion "in the midst of our advanced civilization". But the principle was accepted, subject to local option. The school boards were also empowered to pay the school fees of necessitous children, since for reasons of economy the Government of that day felt unable to make education free.

School boards were not, however, established over the whole of the country, and where they did not exist there were no means of compelling the attendance of children at school. Moreover, the school boards' use of their powers was affected by the controversy on the denominational issue. Thus, while

some school boards sought to use their powers without any limitation to particular types of school, others restricted their use to attendance at board schools—i.e., the non-denominational schools. Some, like the Birmingham School Board, declined to pay for poor children to attend denominational schools. Others, like the Manchester School Board, felt no such qualms.

It was not surprising, therefore, that it continued to be a problem to get the children into the schools and to get them to attend regularly. The short amending Act of 1873 had made obligatory the attendance at school of children whose parents were in receipt of poor relief, but the first measure to deal effectively with the problem was the Elementary Education Act of 1876. It made it the duty of the parent of every child under fourteen to see that his child received efficient elementary instruction in reading, writing and arithmetic. The Act also fixed the lower limit for compulsory school attendance at five and provided that no child was to be employed under ten years of age, or between the ages of ten and fourteen unless he had obtained a certificate from H.M. Inspector of Schools that he had passed standard IV in reading, writing and arithmetic, or had made 250 attendances for each of five years. Responsibility for administering the provisions of the Act was placed on the school boards where they existed. Elsewhere, school attendance committees were established.

A further step was taken in 1880. Under the Act of that year, school boards and attendance committees were required to frame by-laws, if they had not already done so, regulating the attendance at school of children in their areas. No child between the ages of ten and thirteen could be absent from school even half-time unless he had obtained a certificate stating that he had reached a standard of education prescribed in the by-laws. At the same time the provision by which a child could be employed if he had made 250 attendances in each of five years was restricted to children of thirteen, and even then the child had to attend school half-time for another year.

The Act of 1891 gave parents the right to demand free elementary education for their children, and in 1893 the minimum age for total or partial exemption under the by-laws was raised to eleven. In 1899 it was raised to twelve, but children between eleven and thirteen who had passed the standard fixed for partial exemption from school attendance were not required to attend school more than 250 times in any year. Other children of twelve could obtain partial exemption if they had made 300 attendances in not more than two schools during each year for five preceding years. The following year, the Elementary Education Act, 1900, enabled by-laws to be made requiring school attendance up to the age of fourteen.

Thereafter, exemptions declined in number over the country as a whole, but they persisted to an appreciable extent in Lancashire, and when the

Departmental Committee on Juvenile Education in Relation to Employment after the War explored the subject in 1917, it summed up the situation by stating that "in a sense it is true to say that the statutory leaving age is already fourteen, but the ways in which earlier exemption can be obtained are so numerous, and in many localities are so freely taken advantage of, that the effective leaving age often approximates rather to thirteen than to fourteen". It was not until the Education Act of 1918 that provisions for exemption below the age of fourteen were finally abolished. The Act of that year required all children to attend school until the end of the term in which they attained the age of fourteen. It also empowered local education authorities to raise the age to fifteen by by-law, with provision for the exception of children employed in particular occupations and exemptions for individual children between the ages of fourteen and fifteen for such time, and upon such conditions, as the authority thought fit. The operation of this provision was postponed by the Board of Education on financial grounds in a circular dated 18 May 1922, and when this restriction was later withdrawn, only fifteen out of the 315 authorities adopted by-laws providing for school attendance up to the age of fifteen.

A bill to raise the age to fifteen was introduced in December 1929, but, following representations that the voluntary schools would not be able to play their part without special financial assistance, it was withdrawn in May 1930 and replaced by a revised bill. It was not, however, found practicable to proceed with that bill before the end of the session. A third bill was introduced in November of the same year. It was intended that the question of grants in aid of voluntary school buildings should be dealt with separately, but an amendment to the bill was carried in the House of Commons providing that it should not come into operation until an Act was passed authorizing expenditure out of public funds to enable the voluntary schools to meet the requirements of the bill. The bill as thus amended was rejected by the House of Lords in February 1931, and with the financial crisis supervening no further measure was introduced until 1936. The Act of that year provided for the raising of the age with exemptions for beneficial employment, but the date on which this was to have been effected (1 September 1939) coincided by all but two days with the outbreak of war, and this provision of the Act was therefore suspended by the Education (Emergency Provisions) Act, 1939.

The statutory requirement that all children shall receive a full-time and efficient education according to their age, ability and aptitude had not been achieved without a long and bitter struggle throughout two generations. Education after 1876 was compulsory, but it was not free except to the very poor. The fees, however, were not high, the upper limit of charge being ninepence a week. Any school charging higher fees than this was not an elementary school

for the purposes of the Act. In relation to the wage rates current in 1870, ninepence was of course a very much greater outlay than it would be today. After 1891, elementary education was free to all intents and purposes, but fees for elementary education were not finally abolished until the Act of 1918. Revolutionary as it was, the Act of 1870 did little more than secure the legal and administrative foundations upon which succeeding generations of legislators and administrators were to build the modern system of public education, which, after 1944, may be said to make available to every boy and girl in the British Isles primary and secondary school education without cost to their parents and in addition to go far towards ensuring that no pupil likely to be able to profit by higher education should be debarred merely because of poverty from the opportunity to follow the appropriate course of study in technical schools or in universities. Much remained to be done after 1870 to achieve such a right to a comprehensive free education from the kindergarten to the university at the expense of those who supported the State by taxes and the local authorities by paying rates.

The story is part of the process by which within the last fifteen years the United Kingdom has been transformed into a modern welfare State.

The first necessity, after 1870, was to devise the right administrative machinery to ensure that the new Education Act and its successors, notably the Acts of 1902, 1918 and 1944 would not remain dead letters, as parts of earlier Acts had been. Not the least difficulty about devising a national educational system was to know who should be responsible for managing the schools. The State itself had no administrative machinery able to undertake the task, and public opinion would certainly not have tolerated for one moment any proposal that it should be allowed to create such machinery. It was therefore necessary to rely upon the local authorities, the parishes and the boroughs of the country. In 1870 they had not been reorganized into the compact system of local authorities that they are to-day. The reform of local government and administration did not occur until after recognition of the need for educational advance, and has contributed powerfully to educational progress. In 1870, when new duties were assigned, new administrative bodies had to be created to undertake them.

The Act of 1870 accordingly created local school boards whose primary duty was to found new elementary schools to supplement those already provided by voluntary societies. Schedules to the Act provided for the constitution and work of the school boards. Members of the school boards were elected to them in the same way as candidates are elected to-day to local and county councils. They served a three-year term of duty, but were eligible for re-election. Where there were no school boards, the Board of Education was empowered to "cause them to be formed", but,



as it has already been stated, this was a very difficult task.

By 1900, a generation after the introduction of compulsory elementary education and the creation of the *ad hoc* locally elected school boards a fairly complete system of primary schooling had come into being. Yet the new school boards under public management did not manage more than about 5,000 of the 20,000 schools in the country. Three-quarters of the schools of the country were still provided by the voluntary bodies, whose activities represented the tremendous charitable effort put forth by the British public in their effort to ensure that no English child should grow up ignorant and illiterate. Great as the contribution of private charity had been, it could not cope with a task which every year was becoming larger and more expensive. Standards of teaching in many of the voluntarily provided elementary schools did not as a whole compare well with those of the board schools. The board schools were able to provide one certificated teacher for every 61 pupils, while the voluntary schools had only one for every 85 pupils. The total number of teachers was about 119,000, of whom only half were certificated teachers. In addition, there were about 20,000 young "pupil teachers", apprentices to the art of teaching. The average size of a class was 48 pupils for each adult teacher. The supply of qualified trained teachers was never large enough.

A beginning was made about this time to provide a few special schools for handicapped children under the Blind and Deaf Act, 1893, and the Defective and Epileptic Children Act of 1899, but medical inspection and the provision of cheap school meals were not accepted as necessary adjuncts to public education as they have been in our own time.

Striking as the changes already visible in 1900 were in comparison with the situation as it had been in 1850, there was still no recognition of the principle that the central or local government had a duty to provide a comprehensive system of education. There could be little hope of further progress until this most important duty had been placed upon a reorganized local government system. In 1902 a new Education Act (2 Edw. 7. Ch. 42) met this need by creating local education authorities. The first clause of the Act provided that "the council of every county and of every county borough shall be the local education authority". The Act accomplished the difficult task of abolishing the school boards, most of whose members were strongly disinclined to vote for their own dissolution. The Act also made the new local education authorities undertake the duty of maintaining voluntary schools, which they—and especially those with nonconformist religious sympathies—were very reluctant to do, because their secular or nonconformist outlook made them very unsympathetic to the voluntary schools, many of which were managed by the Church of England.

Only by this means, however, was it possible to placate the very strong feelings of religious bodies. The Act provided in section 4 that

"(1) A council, in the application of money under this Part of this Act, shall not require that any particular form of religious instruction or worship or any religious catechism or formulary which is distinctive of any particular denomination shall or shall not be taught, used, or practised in any school, college, or hostel aided but not provided by the Council, and no pupil shall, on the ground of religious belief, be excluded from or placed in an inferior position in any school, college, or hostel provided by the council, and no catechism or formulary distinctive of any particular religious denomination shall be taught in any school, college or hostel so provided, except in cases where the council, at the request of parents of scholars, at such times and under such conditions as the council think desirable, allow any religious instruction to be given in the school, college or hostel, otherwise than at the cost of the council: Provided that in the exercise of this power no unfair preference shall be shown to any religious denomination.

"(2) In a school or college receiving a grant from, or maintained by, a council under this Part of this Act,

"(a) A scholar attending as a day or evening scholar shall not be required, as a condition of being admitted into or remaining in the school or college, to attend or abstain from attending any Sunday school, place of religious worship, religious observance, or instruction in religious subjects in the school or college or elsewhere; and

"(b) The times for religious worship or for any lesson on a religious subject shall be conveniently arranged for the purpose of allowing the withdrawal of any such scholar therefrom."

The Act supplemented this provision by the specific requirements that "The local education authority shall maintain and keep efficient all public elementary schools within their area which are necessary, and have the control of all expenditure required for that purpose, other than expenditure for which, under this Act, provision is to be made by the managers", and "Religious instruction given in a public elementary school not provided by the local education authority shall, as regards its character, be in accordance with the provisions (if any) of the trust deed relating thereto, and shall be under the control of the managers: Provided that nothing in this sub-section shall affect any provision in a trust deed for reference to the bishop or superior ecclesiastical or other denominational authority so far as such provision gives to the bishop or authority the power of deciding whether the character of the religious instruction is or is not in accordance with the provisions of the trust deed."

Many efforts were made in subsequent years to upset this arrangement in favour of purely secular

schools, but the State in England and Wales has never been committed to the *école laïque*, and the church schools of various denominations continue to receive large annual subventions from public funds from both local government and central government money. No new developments of major importance occurred until after the war of 1914-18, when plans for reconstruction in many branches of social life became popular. In education they produced the Education Act of 1918, usually known as the Fisher Act, after the then President of the Board of Education, the historian Mr. H. A. L. Fisher. It was framed, according to section 1, "with a view to the establishment of a national system of public education available for all persons capable of profiting thereby". As already recorded, the 1918 Act conferred upon local authorities the power to make by-laws requiring parents to retain their children at school up to the age of fifteen years. It also authorized local authorities to compel attendance at continuation schools. It also abolished all fees in public elementary schools, section 26 of the Act providing:

"(1) No fees shall be charged or other charges of any kind made in any public elementary school, except as provided by the Education (Provision of Meals) Act, 1906, and the Local Education Authorities (Medical Treatment) Act, 1909.

"(2) During a period of five years from the appointed day the Board of Education shall in each year, out of moneys provided by Parliament, pay to the managers of a school maintained but not provided by a local education authority in which fees were charged immediately before the appointed day, the average yearly sum paid to the managers under section fourteen of the Education Act, 1902, during the five years immediately preceding the appointed 'day.'

These and other reforms contemplated by the Act involved local authorities in considerable additional expenditure at a time when the need for economy after the war was insistently urged in Parliament and beyond it. Economy committees, it has been said, 'wrought havoc with much of the 1918 Act' (*Report of the Ministry of Education for the year 1950*, Cmd 8244, p. 6). The financial situation of the country had barely begun to show some improvement in the 1930s when worsening international relations culminating in the outbreak of war again arrested any hope of making further progress.

### 3. THE EDUCATION ACT OF 1944

During Great Britain's tremendous struggle for survival in the world war of 1939-44 the Board of Education was working out plans for re-casting the educational code in England and Wales in order, at last, to realize that vision of a "national system of public education" which the 1918 Education Act had outlined but had failed to make wholly effective. Between the wars, the ferment of interest in all

aspects of education kept the question very much alive and stimulated many valuable ideas able to guide the re-planning of education in all its aspects. Many books and reports were published in the course of the vigorous debates the subject occasioned.

The Act of 1944 was regarded as a good augury for the period of peace, prosperity and progress which it was hoped would introduce a new epoch in human relations by firmly securing, in a planned national educational policy, one of the principal bastions of the welfare State. This great need for advance had been described by the Board of Education in 1942 in the following words:

"The full-time schooling of the children of our country is in many respects seriously defective. It ends for some 90 per cent of them far too soon (fourteen). It is conducted in many cases in premises which are scandalously bad. It is imparted in the case of some schools by persons who need have no qualifications to teach anybody anything. It is conducted under statute and regulations which emphasise social distinctions and which in general make the educational future of the child more dependent on his place of residence and the financial circumstances of his parents than on his own capacity and promise.

"Both educational theory and practice have long since outgrown the administrative machinery. Thus we find the term elementary education, which in its origin connoted nothing more than a rudimentary knowledge of the 'three R's' (reading, writing and arithmetic) applied to schools for older children between 11 and 12 (and sometimes 15) who have mastered these tools of learning before they left the junior school at 11. This absurdity will become more marked when the school leaving age reverts from its temporary level of 14 to the level of 15, at which it was fixed by the Education Act, 1936."

The new Act of 1944 was a determined effort to tidy up matters and to re-shape the educational system of England and Wales in the three stages of primary, secondary and further education, and thereby to provide for the first time "real equivalence of opportunity for all children". Consequently, it dealt with much more than the basic question of elementary or primary education to which this brief account is restricted. Primary educational problems were sufficiently grave. The war had disrupted normal plans for training teachers; it had caused the destruction of many schools and had accelerated the obsolescence of others. More remarkable was the relatively high birth rate, combined with a considerable decline in infant mortality, which made it urgently necessary to plan for an increase in the school population. Within the framework of the new Act and using the powers delegated to the Minister of Education by its provisions, it proved possible to face these new responsibilities. At a time when building was rigorously controlled, resources were made available for the construction of schools, many of them benefiting



by the advice and services of the architects and other specialists on the staff of the Ministry of Education.

The most significant of the new rights and duties in relation to primary education created by the 1944 Education Act was the explicit imposition upon local authorities and the Minister jointly of the duty of planning a national educational system and—what is of equal importance—of ensuring its future development. One outstanding advance was the raising of the school-leaving age from fourteen to fifteen. Local authorities were required to have their plans to meet it, in the shape of additional accommodation and teaching staff, ready by April 1947. Wide as the duties of local education authorities and the Minister are, it still remains the basic duty of the parents to secure the education of their children. The “right to education” in the United Kingdom, therefore, remains from the child’s point of view a reflection of the duty of parent and local authority, duties which first received legislative endorsement in 1870. Furthermore, the Minister of Education has the duty under the Act to appoint a day on which the school-leaving age may be raised to sixteen years.

In relation to post-primary or secondary education, the 1944 Act marked a yet more significant advance, which cannot, however, be described here.

Paper plans, even those embodied in legislative measures, must be judged in the light of the activities and actual achievements to which they give rise. Despite the tremendous competition for economic resources in the shape of steel, timber, bricks, other building materials and man-power both for building and for teaching, a great advance was made in the provision of schools and teachers in the years after 1944. By 1950 well over 900 new schools were already under construction, of which over 700 were primary schools. In that year alone plans for over 400 further new schools were approved. The number of teachers in primary and secondary schools in England and Wales rose from 190,000 in 1947 to about 237,000 in 1954. The number of children attending junior and infant, primary and secondary schools rose from 5.4 million in 1947 to 6.4 million in 1954. Of this great total, 1.8 million were attending secondary schools and only about 260,000 of them were over fifteen years—evidence that regular school life for the great majority of English children ceases soon after they attain their fifteenth birthday. The problem of further education, and notably the problem of acquiring the technical skills demanded in a scientific age undergoing swift and bewildering expansion, remains as one of the more important new developments for which provision is being made, but it is one which lies beyond the scope of this paper.

Characteristic of the new determination to achieve an integrated, adequate and progressive national educational policy is the wide measure of power which the 1944 Act vests in the Minister of Education. Such a shift in authority is also symptomatic to some extent

of the gradual decay of the old antinomy of “man versus the State” and a witness of the slow realization that the art of public administration can, with adequate care and skill, contribute powerfully to human welfare. A recent verdict in an extensive treatise and commentary upon the 1944 Act reviewing this aspect of it ten years after the passage of the Act declares, “So far the increased power given to the central administration has been wisely used. No attempt has been made by the Minister to diminish the responsibilities of the Local Education Authorities. On the other hand, the Ministry have taken the initiative, more often than did the old Board of Education, in advising and helping the authorities to carry out their duty.”<sup>1</sup>

#### 4. THE CHOICE OF SCHOOLS BY PARENTS IN ENGLAND AND WALES

The freedom of parents to choose the schools which their children should attend has historically been a burning issue principally because of the diversity of religious beliefs within the country. As has been seen above, the State in the United Kingdom has never sought to establish the purely secular *école laïque*. During the nineteenth century, when no single force was as strong as that of organized religion in shaping the educational programme of the country, the vast majority of parents had to choose a school provided by a religious organization for their children, or deny them any schooling at all, simply because there were few, if any, schools apart from those organized and maintained by religious bodies. There is clearly a world of difference between having to choose a denominational school in default of any other, which was the old system, and the provision of undenominational education in county schools with provisions for “opting out” on religious grounds. The 1944 Act made explicit the requirement that the school day should begin with an act of worship. Exemption was allowed by means of a conscience clause. The text of the enactment (Section 25) is as follows:

“(1) Subject to the provisions of this section, the school day in every county school and in every voluntary school shall begin with collective worship on the part of all pupils in attendance at the school, and the arrangements made therefor shall provide for a single act of worship attended by all such pupils unless, in the opinion of the local education authority or, in the case of a voluntary school, of the managers or governors thereof, the school premises are such as to make it impracticable to assemble them for that purpose.

“(2) Subject to the provisions of this section, religious instruction shall be given in every county school and in every voluntary school.

<sup>1</sup> Wells, M. M. and Taylor, P. A., *The New Law of Education*, fourth edition, 1954, p. 6.

"(3) It shall not be required, as a condition of any pupil attending any county school or any voluntary school, that he shall attend or abstain from attending any Sunday school or any place of religious worship.

"(4) If the parent of any pupil in attendance at any county school or any voluntary school requests that he be wholly or partly excused from attendance at religious worship in the school, or from attendance at religious instruction in the school, or from attendance at both religious worship and religious instruction in the school, then, until the request is withdrawn, the pupil shall be excused from such attendance accordingly.

"(5) Where any pupil has been wholly or partly excused from attendance at religious worship or instruction in any school in accordance with the provisions of this section, and the local education authority are satisfied:

"(a) That the parent of the pupil desires him to receive religious instruction of a kind which is not provided in the school during the periods during which he is excused from such attendance;

"(b) that the pupil cannot with reasonable convenience be sent to another country or voluntary school where religious instruction of the kind desired by the parent is provided; and

"(c) that arrangements have been made for him to receive religious instruction during school hours elsewhere,

the pupil may be withdrawn from the school during such periods as are reasonably necessary for the purpose of enabling him to receive religious instruction in accordance with the arrangements:

"Provided that the pupil shall not be so withdrawn unless the local education authority are satisfied that the arrangements are such as will not interfere with the attendance of the pupil at school on any day except at the beginning or end of the school session on that day.

"(6) No directions shall be given by the local education authority as to the secular instruction to be given to pupils in attendance at a voluntary school so as to interfere with the provision of reasonable facilities for religious instruction in the school during school hours; and no such direction shall be given so as to prevent a pupil from receiving religious instruction in accordance with the provisions of this section during the hours normally set apart for that purpose, unless arrangements are made whereby the pupil shall receive such instruction in the school at some other time.

"(7) Where the parent of any pupil who is a boarder at a county school or a voluntary school requests that the pupil be permitted to attend worship in accordance with the tenets of a particular religious

denomination on Sundays or other days exclusively set apart for religious observance by the religious body to which his parent belongs, or to receive religious instruction in accordance with such tenets outside school hours, the managers or governors of the school shall make arrangements for affording to the pupil reasonable opportunities for so doing and such arrangements may provide for according facilities for such worship or instruction on the school premises, so however that such arrangements shall not entail expenditure by the local education authority."

Local education authorities were authorized to set up standing advisory councils on religious matters if they so desired.

Legal action for the enforcement of rights to education has been rare in England and Wales. A testimony in part of the adequacy of the current provision of schools, this is also evidence of the success of the legislation guaranteeing educational facilities since the Acts of Parliament, notably the Act of 1944, make explicit provision for the reference of complaints to the Minister, who can take action in the courts to enforce his decisions. Section 99 of the 1944 Act provides as follows:

"(1) If the Minister is satisfied, either upon complaint by any person interested or otherwise, that any local education authority, or the managers or governors of any county school or voluntary school, have failed to discharge any duty imposed upon them by or for the purposes of this Act, the Minister may make an order declaring the authority, or the managers or governors, as the case may be, to be in default in respect of that duty, and giving such directions for the purpose of enforcing the execution thereof as appear to the Minister to be expedient; any such directions shall be enforceable, on an application made on behalf of the Minister, by mandamus.

"(2) Where it appears to the Minister that by reason of the default of any person there is no properly constituted body of managers or governors of any county school or voluntary school, the Minister may make such appointments and give such directions as he thinks desirable for the purpose of securing that there is a properly constituted body of managers or governors thereof, and may give directions rendering valid any acts or proceedings which in his opinion are invalid or otherwise defective by reason of the default.

"(3) Where it appears to the Minister that a local education authority have made default in the discharge of their duties relating to the maintenance of a voluntary school, the Minister may direct that any act done by or on behalf of the managers or governors of the school for the purpose of securing the proper maintenance thereof shall be deemed to have been done by or on behalf of the authority, and may reimburse to the managers or governors any sums which in his opinion they have properly expended

for that purpose; and the amount of any sum so reimbursed shall be a debt due to the Crown from the authority, and, without prejudice to any other method of recovery, the whole or any part of such a sum may be deducted from any sums payable to the authority by the Minister in pursuance of any regulations relating to the payment of grants."

Parents are guaranteed as far as possible in their rights to choose a primary school for their children. Section 76 of the 1944 Act provides:

*"Pupils to be educated in accordance with wishes of parents.* In the exercise and performance of all powers and duties conferred and imposed on them by this Act the Minister and local education authorities shall have regard to the general principle that, so far as is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure, pupils are to be educated in accordance with the wishes of their parents."

It is clear that this provision is not intended to give the parent the overriding right of education for his children at the public expense at any school he may select.

A parent's choice of school is not of course motivated by religious considerations alone, and a complex code of practice has been built up in the endeavour to adjust the element of compulsory school attendance by the child with his aptitudes and abilities and the wishes of the parent in the matter. For the great majority of children of primary age no special difficulty arises. The procedure in the marginal cases in which a parent does not send his child to school is that the local authority may, unless it considers that there are valid reasons why the child should not attend school, require the parent to select a school and to send the child to it. If no school is selected by the parent, the local authority may designate a school. If the parent selects a school which would involve the local authority in unreasonable expense (e.g., for transport to and from the school) or if the school desired by the parent is clearly unsuited to the aptitude and ability of the child, the local authority may refuse the parent's request. If the parent continues to object, he may appeal to the Minister of Education for settlement. Difficulties arise over the transport of children in remote areas to school, and an elaborate system of rules has come into being in order to deal with them, even to the extent of empowering local authorities to pay for the board and lodging of children near to schools which would otherwise not be accessible. The distances from school which are normally regarded as reasonably justifying public expenditure on free transport are specified. For children under the age of eight, free transport must be provided if they live more than two miles from school and for children over that age if they live more than three miles from school. In practice these limits are often relaxed for children of primary school age.

The subject is fully dealt with in the Ministry of Education's *Manual of Guidance, Schools*, and it needs no detailed analysis here but is cited as evidence of the strenuous endeavour made to give administrative effect to the principle enshrined in the Universal Declaration of Human Rights, article 26, paragraph 3, that parents should "have a prior right to choose the kind of education that shall be given to their children".

## 5. THE QUALITY OF PRIMARY EDUCATION

No better illustration exists of the refusal of the Government to attempt the formal indoctrination of the inhabitants of the United Kingdom than the fact that nowhere in the early Education Acts referred to in this paper was there a definition of what was meant by "elementary" or "primary education". The Act of 1921 defined higher education as "education other than elementary", but did not define "elementary". The 1944 Act (section 7) gives the following general indication:

"The statutory system of public education shall be organised in three progressive states to be known as primary education, secondary education and further education; and it shall be the duty of the local education authority for every area, so far as their powers extend, to contribute towards the spiritual, moral, mental and physical development of the community by securing that efficient education throughout those stages shall be available to meet the needs of the population of their area."

The Education (Miscellaneous Provisions) Act, 1948 (section 3, subsection 2) describes primary education as full-time education suitable to the requirements of junior pupils up to between ten years six months and twelve years of age.

The content of education prescribed by the curricula in the schools, not being a matter regulated by the Government in England and Wales, is as already stated above, left to the local authorities and the teachers in their service. "Education in the United Kingdom" is, as section 7 of the 1944 Act just quoted will show, a term which has always been understood in Great Britain in the sense of Article 26 of the Universal Declaration of Human Rights as being "directed to the full development of the human personality". How far it succeeds in this and in the other objectives of the Universal Declaration must therefore depend not upon government decrees and pronouncements, but upon the instructed conscience, intelligence, ability, zeal and energy of the great body of teachers of the country, their employers in the locally elected and locally responsible education authorities, and the managers of church and denominational schools, not forgetting the supreme and pervasive influence of the parents and the home life of the children. The quality of education, its nature and direction, therefore are not determined by state direction, but are inevitably the reflection of the prevalent national ethos of the time.

# UNITED STATES OF AMERICA

## HUMAN RIGHTS IN THE UNITED STATES IN 1954

### A SUMMARY OF PERTINENT ACTIONS TAKEN BY FEDERAL, STATE, AND OTHER GOVERNMENTAL AUTHORITIES<sup>1</sup>

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#### INTRODUCTION

In the United States of America the year 1954 was one of significant and continuing progress in the field of human rights. Government—federal, state, local and territorial—and private actions were taken on many fronts to protect and enhance the enjoyment of these fundamental rights.

Basic guarantees of individual rights and freedoms are contained in the Constitution of the United States adopted more than 150 years ago (especially in the first ten amendments thereto, known collectively as the “Bill of Rights”) and in corresponding provisions of the Constitutions or organic laws of the states, territories and other jurisdictions.<sup>2</sup> The exercise of governmental authority must conform to these constitutional provisions. Legislation on economic, social and cultural matters, relating, for example, to social security and education, is in large part the responsibility of the state and territorial governments, but the

<sup>1</sup> This note was prepared by the United States Government.

<sup>2</sup> Important provisions of this kind will be found in the United Nations *Yearbook on Human Rights for 1946*, pp. 322 *et seq.*

Federal Government co-operates, financially and otherwise, in many of these fields.

This survey is confined to those official developments of the year 1954 which appear to have relatively far-reaching implications. A more nearly complete picture would include reference to countless day-to-day activities of the governments of the United States and of the states, territories and other jurisdictions, and particularly to the financial provisions made by these governments for the protection or promotion of human rights throughout the year. These official acts, in turn, constitute only a small part of the total activities of the American people in this field, which include also many actions taken through private initiative and free enterprise towards the goal of justice and opportunity for all.

#### HUMAN RIGHTS IN GENERAL

##### HUMAN RIGHTS DAY

As in previous years, President Eisenhower proclaimed 10 December, 1954 as United Nations Human Rights Day. He called upon the people of the United States “to join with people throughout the world in observing December 10, 1954, as United Nations Human Rights Day, and on this day and on December 15, the anniversary of our Bill of Rights, as well as throughout the year, to give profound thanks to Almighty God for the rights the people of our nation have so long enjoyed—freedom of speech and of the press; freedom to worship in accord with the dictates of conscience; fair trial and freedom from arbitrary arrest; the right to own property and to profit by the fruits of our labours. For these rights and freedoms men and women in many countries have striven and died, as our forefathers strove and died, and as today still others strive and die in defence of human dignity against the claims of totalitarian governments. Let us as free men stand firm in our faith in liberty for all nations and all peoples. Let us by example and co-operation strengthen the world-wide recognition of human rights as the basis for a lasting and prosperous peace.”

##### TREATIES

The enjoyment of a wide variety of human rights by Americans in Israel and Greece and by nationals of those countries in the United States was stipulated

in separate but similar treaties of friendship, commerce, and navigation which came into force during 1954. These treaties provided that nationals of either country shall enjoy certain rights in the territory of the other, including:

- (a) Freedom of movement, residence, conscience, religious worship, and freedom to gather data and to transmit material for dissemination abroad, subject to measures necessary for the maintenance of public order, morals and safety;
- (b) Fair and prompt trial, and reasonable and humane treatment if taken into custody;
- (c) Acquisition, ownership and protection of property with national and most-favoured-nation treatment regarding access to courts of justice and administrative tribunals in pursuit or defence of their rights; the same treatment as nationals with respect to engaging in professions, leasing land, buildings, etc., and conducting educational, philanthropic and professional activities;
- (d) Compensation or other benefits on the same basis as nationals for disease, injury or death incurred in the course of employment, and, in the case of Israel, compulsory insurance against the loss of wages resulting from unemployment, old age, sickness, disability, or against loss of financial support due to death of the wage earner.

#### CIVIL AND POLITICAL RIGHTS

An important element of the Federal "Bill of Rights", and of the bills of rights incorporated in the state constitutions, is a group of rights generally referred to by such designations as "civil liberties", "political rights", and "freedoms". This group includes, for example, the right to life and liberty, freedom of expression and of conscience, the right to a fair trial, and the right to participate in one's government. Judicial enforcement of these rights and freedoms is assured through specific clauses embodied in the Fifth and Fourteenth Amendments to the Constitution. These provisions are described as the "due process" and the "equal protection" clauses which assure fair and equal enjoyment by all persons of the constitutionally guaranteed rights.

#### LIFE, LIBERTY, AND SECURITY OF PERSON

The Declaration of Independence specified that life and liberty are among the "unalienable Rights" with which all men are "endowed by their Creator". The Fifth and Fourteenth Amendments to the Federal Constitution provide that no person may be deprived of life or liberty by governmental authority without due process of law. In addition to its important function of guaranteeing the method by which life or liberty is protected, "due process" also has a substantive meaning in terms of the content of individual freedoms from governmental interference. The writ of *habeas corpus*, which is a historic device whereby

individuals can challenge the legality of detention, is recognized in article I of the Constitution, which provides that "the Privilege of the Writ of *Habeas Corpus* shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it".

The importance attached to due process of law in America is evidenced by the fact that at least sixteen cases were decided in 1954 by the United States Supreme Court with primary emphasis on procedural safeguards of life and liberty. Of greatest interest was the case of *Leyra v. Denno*,<sup>1</sup> where after the petitioner had been subjected to many hours of day-and-night questioning by police officers and subsequently by a state-employed psychiatrist, a confession was elicited. Here the Court re-enunciated the doctrine that an involuntary confession is not consistent with due process of law. The outstanding feature of the case was the fact that the confessions used in evidence in the state court trial were voluntarily given by the defendant on the same day that a confession had been illegally extorted. In reversing the conviction, through a *habeas corpus* proceeding, the Supreme Court held that the involuntary confession tainted the trial and deprived the defendant of due process. The concern of the Court lay not with the guilt or innocence of the defendant, but with the safeguarding of constitutional rights.

*Adams v. Maryland*<sup>2</sup> is noteworthy because the state of Maryland convicted the defendant of violating its anti-gambling laws, and used as evidence statements previously made by him before a United States Senate Committee investigating crime. The defendant had confessed to the Committee that he had conducted a gambling business in Maryland. A federal statute in effect immunizes witnesses from prosecution based on information elicited from them by congressional committees. The Supreme Court of the United States reversed the decision, holding that conviction of the defendant based on such testimony was improper irrespective of his own admission of guilt. The Court pointed out that if the state wished to prosecute Adams it was obliged to develop its case and establish his guilt from sources other than his admissions to the Senate Investigating Committee.

#### EQUAL PROTECTION OF THE LAW

The Fourteenth Amendment to the Federal Constitution provides, *inter alia*, that no state shall deny any person the equal protection of the laws.

In what was probably the year's most important development in the field of human rights, the Supreme Court unanimously decided in *Brown v. Board of Education of Topeka*, on 17 May 1954, that segregation on the basis of race in all publicly supported schools is forbidden by the "equal protection of the laws"

<sup>1</sup> 347 U.S. 556 (1954).

<sup>2</sup> 347 U.S. 179 (1954).

clause of the Fourteenth Amendment to the United States Constitution.<sup>1</sup> The Court invited the Department of Justice, the parties and the states with segregated education to present their views regarding the type of decree that should be entered to carry out the decision.

In another aspect of equal protection of the laws, progress continued in 1954 in the matter of abolishing segregation between white and Negro personnel in the armed forces.

On 12 January 1954, an order was issued by the Secretary of Defense relating to the ending of segregation in schools on military installations. The order directed that no new school shall be opened for operation on a segregated basis and that schools presently so conducted should cease operating on such basis as soon as practicable and under no circumstances later than 1 September 1955. Since theretofore all schools conducted by the military were already being operated on an integrated basis, this order had as its purpose the achievement of integration in those schools, private or public, conducted by authorities other than the military, on military reservations. By the end of 1954 complete compliance with this order had been accomplished.

In 1954 the Territory of Guam passed legislation which provides that owners of business establishments, such as hotels, restaurants, public conveyances, etc., who restrict their clientele on the basis of race or religion, are punishable by law.

#### FREEDOM OF SPEECH AND OF THE PRESS

The First Amendment to the Federal Constitution provides that Congress shall make no law abridging freedom of speech or of the press, and the Supreme Court has held that the Fourteenth Amendment protects these freedoms from abridgement by the states. In addition, each of the state constitutions provides expressly for freedom of speech and of the press.

Two unrelated aspects of freedom of expression were before the Supreme Court during 1954—state censorship of motion pictures and regulation of labour union activities. In 1952 the Court, in *Burstyn v. Wilson*,<sup>2</sup> for the first time applied the free speech and due process of law provisions of the First and Fourteenth Amendments respectively, to motion pictures. Notwithstanding this decision, the states of New York and Ohio pursuant to censorship laws refused on moral grounds to license certain films for exhibition. The United States Supreme Court reversed decisions by the highest courts in the two states which had approved the denial of exhibition licences,<sup>3</sup> in a decision reinforcing that delivered in the *Burstyn*

case. A concurring statement of two justices of the Court points out that:

“Motion pictures are of course a different medium of expression than the public speech, the radio, the stage, the novel, or the magazine. But the First Amendment draws no distinction between the various methods of communicating ideas.”<sup>4</sup>

The labour case was an extension of *Garner v. Teamsters Union*, decided earlier, where the Court upheld the right of peaceful picketing by a labour union.<sup>5</sup> In April 1954, the Court held, in *United Construction Workers v. Laburnum*, where the Union's agents used aggressive and intimidating picketing methods against the employer-corporation, that the Federal Labor Management Relations Act does not prevent a suit to recover damages resulting from such union activities.<sup>6</sup>

In *United States v. Gugol*,<sup>7</sup> a case tried in 1954 involving deprivation of the right to freedom of the press, the Federal Government successfully prosecuted the police chief of Newport, Kentucky, for violation of the United States Civil Rights Statute.<sup>8</sup> In an apparent effort to avoid publicity, the police chief had seized the victim's camera and destroyed his film of pictures made during a raid on a gambling establishment and subsequently had him arrested and jailed.

#### FREEDOM OF RELIGION

The First Amendment to the Federal Constitution provides that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” The restraint thus imposed upon the Federal Congress has, with similar restraints in other early amendments, been made applicable to the state governments by the Supreme Court's interpretations of the Fourteenth Amendment. The state constitutions, moreover, themselves contain guarantees of freedom of religion.

A significant contribution to the concept of separation of Church and State was made when the United States Supreme Court in 1954 denied a petition for further consideration of a decision of the highest court of the state of New Jersey. In *Tudor v. Board of Education* the New Jersey court had ruled against the distribution in public schools of Gideon Bibles (a translation of the Bible generally used by Protestants) as constituting a preference of one religion over another.<sup>9</sup> The Court held that to allow use of public school machinery for such distribution is to aid one religion and consequently violates the principle of separation of Church and State.

<sup>4</sup> *Id.* at 589.

<sup>5</sup> 346 U.S. 485 (1953).

<sup>6</sup> 347 U.S. 656 (1954).

<sup>7</sup> 119 F. Supp. 897 (Ky. 1954).

<sup>8</sup> 18 U.S.C. 242.

<sup>9</sup> 14 N.J. 31 (1954).

<sup>1</sup> 347 U.S. 483 (1954). This case is discussed more extensively in the section on education, on p. 290.

<sup>2</sup> 343 U.S. 495 (1952).

<sup>3</sup> 346 U.S. 587 (1954).



## FAIR TRIAL

The Federal Constitution contains numerous safeguards with respect to a fair trial for those accused of crime, including, in particular, guarantees of the right of the accused to a speedy public trial by an impartial jury. Similar provisions occur in the state constitutions.

In numerous decisions the United States Supreme Court has held that it is a denial of the equal protection of the laws to try a defendant of a particular race or colour under an indictment issued by a grand jury, or before a petit jury, from which all persons of his race or colour have, solely because of that race or colour, been excluded by a state, whether acting through its legislature, its courts, or its executive or administrative officers.

Relatively few persons found cause to appeal to higher courts in 1954 on this ground, but the foregoing principle was applied by the Supreme Court in *Hernandez v. Texas* to protect the individual from discrimination based on national origin.<sup>1</sup> The Court, in reversing the conviction of murder, held in effect that systematic exclusion of eligible persons from juries on this basis denied the accused his right to a fair trial under the Fourteenth Amendment of the Federal Constitution.

In *Massey v. Moore*, the Supreme Court of the United States emphasized the scope of the requirement of the due process clause of the Fourteenth Amendment to the Federal Constitution in assuring the right of every person to a fair trial.<sup>2</sup> Here the petitioner, who had been convicted of robbery in a state court where he had waived his right to be represented by counsel, petitioned a federal district court for a writ of *habeas corpus*, contending that he had been insane at the time of his trial. The Supreme Court held that the petitioner was entitled to a hearing on his contention, saying:

"The requirement of the Fourteenth Amendment is for a fair trial... No trial can be fair that leaves the defense to a man who is insane, unaided by counsel, and who by reason of his mental condition stands helpless and alone before the Court."<sup>3</sup>

In another case<sup>4</sup> the Supreme Court granted relief to the petitioner, who was sentenced as an habitual criminal, because the state court had refused to grant him a delay in his trial in order that he might obtain the assistance of counsel.

The highest court of the state of New York reaffirmed the right to a public trial by reversing the conviction in *People v. Jelke*, where the trial judge had ordered the press excluded from the trial because of the indecent nature of the testimony.<sup>5</sup>

<sup>1</sup> 347 U.S. 475 (1954).

<sup>2</sup> 348 U.S. 105 (1954).

<sup>3</sup> *Id.* at 108.

<sup>4</sup> *Chandler v. Fretag*, 348 U.S. 3 (1954).

<sup>5</sup> 308 N.Y. 56 (1954).

## ASYLUM

During 1954, as in previous years, Congress enacted legislation, in the form of private laws, to provide asylum in the United States for various individuals who might otherwise have been required to leave the country.

In addition, the Refugee Relief Act of 1953 continued in effect during 1954 to assist in the problem of re-settling refugees, including those who had fled from certain Eastern European countries.

## NATIONALITY

Under the United States Constitution persons born or naturalized in the United States or subject to the jurisdiction thereof are citizens of the United States and of the state wherein they reside. They may lose their nationality upon conviction for treason, or attempting by force to overthrow the United States Government, or bearing arms against the United States. The Expatriation Act of 1954 amended previous legislation so that expatriation follows automatically upon conviction of certain offences, already defined as criminal under United States law, which involve the use of force to overthrow governmental authority—namely, inciting, assisting or engaging in any rebellion or insurrection against the United States or the laws thereof or giving aid or comfort thereto; conspiring to overthrow, put down or destroy by force the Government of the United States or to levy war against them; and advocating, abetting, advising or teaching the duty, necessity, desirability or propriety of overthrowing the Government of the United States or any state, district, territory or possession thereof by force or violence.

## GOVERNMENT BY THE WILL OF THE PEOPLE

The Declaration of Independence states that governments derive their just powers "from the consent of the governed". This principle was made a matter of basic law by the Constitution, which assured to the citizens of the United States a representative form of government.

This year, Congress enacted the Communist Control Act of 1954, which states that while the Communist party is purportedly a political party, it is in fact an instrumentality of a conspiracy to overthrow the government by force and violence, controlled by a foreign Power and constituting a clear and present danger to constitutional government in the United States. The Act further provides that persons who become or remain members of the Communist party or any other organization with its purpose, with knowledge of the objectives of such organization, are to be treated as members of Communist action organizations within the terms of the Internal Security Act of 1950, which, *inter alia*, requires registration with the Attorney-General and subjects such persons

to restrictions as regards employment with the United States Government.<sup>1</sup>

In addition, under a 1954 amendment to the Subversive Activities Control Act of 1950,<sup>2</sup> communist-infiltrated organizations, such as labour unions primarily directed by persons connected with communism, were denied the benefits of the National Labor Relations Act, including determination of labour representation, enforcement of collective bargaining, and redress for unfair labour practices.

### ECONOMIC, SOCIAL AND CULTURAL MATTERS

In the United States, the enjoyment of economic, social, and cultural benefits is primarily a matter of free enterprise, but Government, by regulatory measures, endeavours to provide a basis of equal opportunity for their enjoyment and takes such steps as may be desirable to facilitate and supplement individual initiative.

In addition to important actions by the federal and state governments described below, the United States continued its international programme of technical assistance to less developed countries. In this connexion, formal agreements were concluded with nineteen countries in response to requests for expert advice and other aid. Among these were agreements with the Netherlands, Italy and the United Kingdom relating to certain non-self-governing territories under their jurisdiction. Some of these agreements were of a general nature, for the most part extending previous programmes. Others, dealing with specific aspects of economic and social progress, are mentioned under the appropriate headings.

Extension of technical knowledge was also furthered through a book-exchange programme, involving 423 libraries in 45 countries. Through the United States Library of Congress, books were exchanged with 30 libraries in Europe, 101 in the Far East, 133 in the Near East and Africa, and 159 in Latin America. This programme is in line with over-all objectives as defined in Congressional legislation—namely, to provide for the international interchange of technical knowledge and skills designed to contribute primarily to the balanced and integrated development of the economic resources and productive capacities of economically underdeveloped areas.

### FAVOURABLE CONDITIONS OF WORK

To assure satisfactory working conditions in the country, federal and many state laws are in force which specify minimum standards of safety, maximum hours of work in some cases (especially applicable to women and children under state law), minimum

wages, prohibition of child labour, etc. In addition, many workers in the United States are organized in trade unions, and the right of collective bargaining between unions and employers, in regard to terms and conditions of employment, is recognized by law. On the international level, in 1954 the United States concluded with other countries a number of agreements relating to technical assistance, which had as their objective improving conditions of work. Among these was an agreement with Peru for a co-operative employment service programme.

### *Migratory Workers*

Migratory workers perform a highly essential service to American agriculture by moving into areas with heavy seasonal demands which the local labour market cannot supply. Because a number of migrant workers come into the United States each year from Mexico, the United States has maintained agreements with that country for some years. Those concluded in 1954 provided, *inter alia*, that the wage rates paid to Mexican workers shall not be less than the prevailing wages for domestic labourers engaged in similar employment; that employment under any four-week contract shall average forty hours a week; and that Mexican workers may elect representatives to present complaints to their employers. The agreements also provided for medical, surgical and hospital care to be made available promptly to workers in need, whether or not the illness or injury is occupationally incurred, and for life insurance in case of death.

In 1954 the President of the United States of America appointed a Federal Interdepartmental Committee on Migratory Labor to assist the federal agencies in mobilizing and stimulating more effective programmes and services for domestic agricultural migrants and their families.

Amendments to the New York labour law were passed in 1954 to improve working and living conditions for migratory workers. The State Legislative Committee on Migrant Labor was continued; annual registration of farm labour contractors and crew leaders was required; and provision was made for establishing adequate housing standards. Arizona passed remedial legislation in 1954 which provided for sanitation and fire protection standards for migrant labour camps.

### *Industrial Safety and Child Protection*

In 1954 New Jersey passed the Mine Safety Act, which, among other matters, expanded earlier provisions of the law prohibiting employment of children in underground mines to include a prohibition on employment of minors under eighteen in any work "in, about or in connection with" any mine. In Rhode Island in 1954 revision of the workmen's compensation law further strengthened enforcement of federal child labour laws by providing for double compensation to minors injured while unlawfully employed, and Virginia and New Jersey passed legisla-

<sup>1</sup> See *Tearbook on Human Rights for 1950*, p. 324.

<sup>2</sup> This title is accorded to title I, Subversive Activities Control, of the Internal Security Act of 1950, by section 1 (a) thereof.



tion to improve working conditions in the mines by authorizing their respective departments of labour and industry to issue safety regulations.

### SOCIAL SECURITY

Broadly considered, social security in the United States includes the provision of (1) payments to individuals, on an insurance or similar basis, to compensate for the loss of earnings as a result of old age, sickness, disability, unemployment, or death; (2) assistance, or payments on the basis of need, to persons with an income inadequate for subsistence, and (3) maternal and child health and welfare service, vocational rehabilitation and other welfare services.

In 1954 there was considerable federal legislative activity in the field of social security. Because most state and territorial legislatures hold regular biennial sessions in the odd-numbered years, there was little or no change made in their programmes during 1954.

#### *Retirement, Old-age and Survivorship Payments*

The Social Security Act Amendments of 1954 made several major changes in the federal old-age and survivors' insurance programme. It extended coverage to farmers; permitted coverage to public employees who are members of state and local retirement systems; liberalized the coverage tests for farm and domestic workers; and covered ministers and members of religious orders (on an individual elective basis) and certain other smaller groups, including some professional and self-employed persons, so that the Act, as amended, covers nearly all the gainfully employed. It increased benefit amounts; liberalized the method of computing the "average monthly wage" on the basis of which benefits are determined; broadened the retirement test to include earnings not covered by the programme and increased to \$1,200 a year the amount of earnings permitted without loss of benefits; liberalized the insured-status requirements, protected the benefit rights of insured workers during periods of prolonged total disability; raised the maximum amount of earnings from which benefits can be derived; and amended the employment tax schedule of the Internal Revenue Code of 1954 to provide for higher employer, employee, and self-employed contribution rates for 1970 and thereafter; and, beginning 1955, raised the maximum amount of earnings to be taxed.

The Federal Railroad Retirement Act was amended to lower the eligibility age of survivor beneficiaries; to repeal the provision that barred retired workers from getting both railroad and old-age and survivors' insurance benefits; and to raise the maximum wage base for contribution and benefit computation purposes.

The Federal Civil Service Retirement Act—the statute governing the programme for Federal Government civilian employees—was amended in 1954 to make permanent the cost-of-living increases in

annuities provided by earlier legislation and to liberalize the provisions for employees of the legislative branch.

Federal legislation in 1954 revised the provisions for income-tax exemption of retirement income to take into consideration pensions other than benefits under the old-age and survivors' insurance and railroad retirement programmes (already exempt from income tax).

The state of Massachusetts provided for the establishment of a Division of Employment of the Aging in 1954 with responsibility for various aspects of their utilization, employment and rehabilitation.

#### *Public Assistance*

The 1954 amendments to the Social Security Act extended for two years the provisions of the 1952 amendments concerning the amount of the federal share in state payments for the special types of public assistance and continued federal approval of certain state plans for aid to the blind with respect to the requirement for considering blind recipients' income.

All states, the District of Columbia, Alaska, Hawaii, Puerto Rico, and the Virgin Islands continued to operate programmes of old-age assistance and aid to the blind with federal financial participation; all but one provided aid to dependent children. Two additional states began providing aid to the permanently and totally disabled, bringing to forty-two the number of states with these programmes in 1954; in addition, Maine passed a law authorizing such a programme.

In addition, assistance programmes for needy persons (other than programmes for which federal aid is provided under the Social Security Act) continued to be available in all the states and territories and in most localities through general assistance, which is financed by the state or local government, or both, without federal participation.

#### *Unemployment Insurance*

The federal-state system of unemployment insurance is in effect in the forty-eight states, the District of Columbia, Alaska, and Hawaii and covers workers in industry, commerce, and service occupations. Federal legislation in 1954 extended the application of the Federal Unemployment Tax Act to employers of four or more (instead of eight or more); extended coverage under the state unemployment insurance laws to most federal civilian workers (the costs to be borne by the Federal Government); and revised the District of Columbia unemployment insurance programme to provide, among other things, higher maximum benefits and longer duration.

The federal unemployment and temporary disability insurance programme for railroad workers was amended in 1954 to provide substantial increases in both

types of benefit; the maximum wage base for contribution and benefit computation purposes was also raised.

#### *Workmen's Compensation*

During 1954, benefits under workmen's compensation laws were raised in seven states—Arizona, Colorado, Maryland, Michigan, New York, Rhode Island and Virginia. In four of these states (Michigan, New York, Rhode Island and Virginia) benefits for all types of disability and for death were increased. Coverage under the Workmen's Compensation Law of Rhode Island was made compulsory, rather than elective, for employers of four or more persons, including private employers, the state and public service corporations.

#### *Public Programmes for Children*

Through a system of federal grants in aid for which state governments are eligible if certain standards are met, the Federal Government helps the states and municipalities to provide maternal and child health services, services to crippled children, and child welfare service. All the states and territories, with one exception, are administering these programmes.

Responsive to public concern for remedial measures to cope with the problems of juvenile delinquency, the United States Senate established in 1954 (through 1953 legislation), under the Committee of the Judiciary, a Subcommittee to Investigate Juvenile Delinquency; its objectives were fact-finding on the extent, causes, character, and contributing factors of juvenile delinquency; focusing public attention on urgent problems; and recommending federal preventive action. Congress extended the work of the Subcommittee through 1955.

### HOUSING

In the United States, development of adequate housing facilities is primarily a matter of private enterprise, as is true in the case of other economic, social, and cultural benefits, but governments—federal, state and local—take such steps as may be desirable to encourage and supplement private initiative.

The year 1954 was one of significant progress in the field of federal housing activities. The Housing Act of 1954 adopted a new and broadened approach to the problem of urban blight (city areas in the process of deteriorating). Under this approach, before a community can obtain federal loans or grants for urban re-development projects, it must, among other things, satisfy federal authorities that it has a "workable program" which will not only eliminate slums and urban blight, but will also prevent their recurrence. Further advances were also made in the field of home financing through the provision of special mortgage insurance assistance for urban re-development activities, and adoption of measures to increase the flow of mortgage funds to under-supplied areas and to meet needs of specially designated groups.

Under the Housing Act of 1954 the Public Housing

Administration was authorized to enter into new arrangements during the fiscal year 1955 for the construction of 35,000 low-rent public housing units for low-income families, which represents an increase of 15,000 units over the number authorized for the previous year.

At the end of 1954, a total of 188 cities and towns were at work on 279 urban renewal projects—slum clearance, re-development and prevention; and out of these 185 were well advanced towards completion. These 185 projects are located in 129 communities, and completion of them will result in the clearance and re-development of more than 7,000 acres of slums and blight and the re-housing of almost 90,000 low-income families. These programmes have encouraged private sources throughout the country to undertake similar, more expanded projects.

The impact of the Supreme Court decision of May 1954 in the school segregation cases has helped to improve the position of Negroes in the housing market. The Housing and Home Finance Agency instituted several measures during 1954 to bring nearer a solution to the housing problems facing Negroes and some other groups. These include steps to assure that services available to the general housing market were made fully effective for these groups; persuasion of home builders and lenders to accept a fuller measure of responsibility to serve all equally; sponsorship of an advisory conference on housing problems attended by some forty leading representatives of home builders, mortgage lenders, real-estate boards and brokers, and civic, social, and religious organizations; and establishment of the National Voluntary Home Mortgage Credit Extension Committee under the Housing Act of 1954, which, along with increasing the flow of mortgage money to under-supplied areas, provides assistance to persons having difficulty in obtaining financing for the purchase or construction of new homes.

The federal college housing programme, designed to assist institutions of higher learning to meet their needs for additional housing for students and faculty, continued at a high level. During 1954, fifty-four applications for assistance totaling more than \$30,000,000 were approved by the Federal Government.

United States international co-operation in the housing field increased during 1954. The interchange of mutually beneficial housing knowledge and experience between the United States, on the one hand, and foreign countries and international organizations, on the other, also continued at a high level. The United States Government, as in previous years, provided information on American housing practices to visitors and representatives of foreign countries. At the request of the host governments, American housing and town planning advisers and technicians were serving in United States operations missions of the International Co-operation Administration in some twenty-six countries. In addition, an agreement for

a co-operative programme in aided self-help housing was concluded with Chile, within the programme for technical co-operation for which a basic agreement had been in effect since 1951.

The states and territories were quick to take advantage of opportunities afforded by federal housing legislation. At the end of 1954, a total of thirty-one states, along with the District of Columbia, Alaska, Hawaii, Puerto Rico, and the Virgin Islands, had enabling legislation authorizing local public agencies to undertake slum clearance and urban re-development programmes under the provisions of the Federal Housing Act of 1949, as amended.

In 1954, Louisiana, following the lead of many other states and municipalities, amended its slum clearance law to require a state public body, in exercising its powers of demolition and removal of unfit dwellings, to provide a feasible method for the temporary relocation of displaced families, and to provide dwellings equal in number to those demolished, to be available for families displaced, at rentals within their financial means. In the same year New York passed legislation authorizing the creation of an additional state debt of \$200 million dollars for slum clearance and low-rent housing purposes.

New Jersey in 1954 passed a law which requires the Division against Discrimination of the State Department of Education to enforce laws against discrimination in housing built with public funds or public assistance.

#### VOCATIONAL REHABILITATION

The year 1954 marked a major expansion of the nation's rehabilitation services to restore physically disabled people to activity and to jobs. In a message to Congress on 18 January 1954 the President of the United States outlined the major rehabilitation needs of the country and presented proposals to extend the programme. Legislation resulted on several fronts.

The greatest single impetus to the programme stemmed from the Vocational Rehabilitation Amendments of 1954, designed to encourage expansion and improvement of rehabilitation facilities throughout the country. The Act includes provisions for greater assistance to and responsibility for the states, which are primarily concerned with the actual rehabilitation process, specialized training for the professional personnel necessary to carry out the expanded programme research to advance the knowledge of ways of overcoming handicapping conditions and facilities in which to provide rehabilitation services. It also includes amendments to the Randolph-Sheppard Act of 1936 which strengthen the programme of licensing blind persons to operate vending stands on federal property and in federal buildings. Out of 1,721 blind vending stands in the country, over 600 are operated on federal property.

Several other federal laws were enacted in 1954 to

strengthen the nation-wide rehabilitation programme. The Medical Facilities Survey and Construction Act, for example, authorizes federal financial participation in the building of rehabilitation facilities; and the Social Security Act Amendments of 1954 provides *inter alia* for protecting the social security benefit rights of the employed and self-employed during periods of prolonged total disability, so that no loss would occur through low or no earnings.

#### HEALTH

The promotion of the public health and the prevention and control of epidemics and other health dangers are primarily state and local responsibilities in the United States. The Federal Government, however, through the Department of Health, Education, and Welfare, supports and assists the states and communities in the development and execution of their programmes.

While medical and hospital services in the United States are provided primarily by private means—about 100 million of approximately 165 million persons in the United States being covered by some type of voluntary hospital and medical insurance and about 86 million having some insurance against the costs of surgical care—the Federal Government provides medical services to certain groups, such as members of the armed forces and seamen, and assists the states in financing the cost of medical services to persons receiving public assistance and to crippled children.

During 1954, federal programmes to increase knowledge about the causes and control of diseases and to assist the states and communities in making available to the people the benefits of new information and techniques, were expanded. Research in the health sciences, including studies in the fundamental sciences as well as such specific categories as chronic and mental diseases, was expanded. Legislation was enacted to provide greater emphasis on health programmes for long-term patients, funds being provided to assist the states and communities in the construction of chronic disease hospitals, diagnostic and treatment centres, nursing homes, and rehabilitation facilities.

State governments took steps during 1954 to meet the many health problems arising out of such social phenomena as the growth in population, increase in the life span and increasing industrialization and urbanization of life. Programmes were expanded in such personal health fields as the control of cancer and heart disease and the promotion of mental health. Activities concerned with the physical health of older citizens resulted in programmes for early detection of diseases, home care of illness and rehabilitation services. Meanwhile, communicable disease programmes were being maintained, with special effort being devoted to programmes to diagnose and treat tuberculosis patients.

The environmental hazards of an industrial society

received attention in expanded state programmes for the prevention of water and air pollution, for the promotion of radiological health, and for accident prevention. A number of states strengthened their laws affecting water resource development and others enacted their first laws to study and regulate the handling of radioactive materials and air pollutants.

### EDUCATION

The provision for educational opportunities for the children of the United States is primarily a responsibility of the state governments rather than the Federal Government. State constitutions usually stipulate that a system of free public schools for all children shall be established. Every state now has free public schools covering the twelve grades of elementary and secondary education, and state universities where advanced education can be had free or at low cost. Private schools, colleges, and universities are also numerous, and parents are free to send their children to the school of their choice. School attendance is compulsory for children in all states up to the age of at least sixteen years. The Federal Government assists the states through various types of educational grants and in other ways.

#### *Equal Protection of the Laws*

The outstanding event bearing upon human rights in the field of education in 1954 was the unanimous United States Supreme Court decision, *Brown v. Board of Education of Topeka*, rendered on 17 May. In this decision, the Court expressly rejected an earlier doctrine announced in the case of *Plessy v. Ferguson* in 1896 (which involved segregation in public transportation), and held that in the field of public education equal protection of the laws is not accorded when the races are provided with substantially equal but separate facilities. The Court stated that such segregation constitutes a denial of equal protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution. In its opinion, the Court said:

"...We must consider public education in the light of its full development and its present place in American life throughout the Nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws.

"Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditure for education both demonstrate our recognition of the importance of education in our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust

normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

"We come then to the question presented: Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other 'tangible' factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does.

"We conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment."<sup>1</sup>

In thirty-one states of the United States the Supreme Court decision required no action, since the schools were already open to children of all races. Its effect was immediately apparent, however, in such previously segregated areas as the District of Columbia and Baltimore, Maryland (each with a large percentage of Negroes in the population) where the public schools subsequently opened on a de-segregated basis in September 1954.

#### *Measures to Improve Education*

During 1954 both the federal and the state Governments adopted measures to improve the educational system of the country.

Congress authorized funds to permit the convocation of a national conference, as well as preliminary conferences in the states and territories, to consider significant problems in the field of education and appropriate means of meeting them at local, state and federal levels.

Federal legislation in 1954 relating to increased internal revenue exemptions for retired persons over sixty-five and persons whose pensions are tax financed, will benefit immediately more than 100,000 retired teachers and school employees.

Amendments to the Social Security Act and to the Internal Revenue Code include "making Federal social security benefits available to employees covered by State or local retirement systems—including members of the educational profession—at their option".

In 1950 Congress made provision for a school construction programme to provide schools in areas where federal activities had caused an increase in the school population. At the end of 1954 over 2,400 such projects were either completed or well under way.

<sup>1</sup> 347 U.S. 492-495 (1954).

Congress also passed legislation in 1954 extending the period during which veterans might obtain free educational benefits.

In 1954 Congress passed an act establishing a Board of Fundamental Education. This board was charged with the responsibility of developing fundamental education by giving citizens of all ages an opportunity to acquire skills and knowledge which would enable them to relate the resources of a community with its needs and interests.

California, Kentucky, Louisiana, Maryland, Michigan, Mississippi, New York, Texas and Virginia enacted measures to increase retirement benefits or to improve retirement conditions for teachers and school employees. In New York State, for example, retired teachers were encouraged to undertake substitute teaching without running the risk of forfeiting retirement income.

Minimum or improved salary scales for teachers and other school employees were established by the legislatures of Louisiana, Maryland, Mississippi, New Jersey, Texas and Virginia. Teacher tenure was strengthened by legislation in Louisiana and Maryland, and a state tenure commission in Michigan was given funds to study the question with a view to improving existing conditions.

With respect to the welfare of schoolchildren, increased federal assistance to the nation-wide school-lunch programme and to the milk programme for children in schools was provided by Congress in 1954; and at least five states (Arizona, Michigan, Nevada, New York, and South Carolina) made provision for such increased aid to schools. Moreover, legislation to improve or expand programmes of education for handicapped children was passed in Louisiana, South Carolina, Massachusetts and Virginia.

The interests of the American people, however, in improving standards of education were not confined to their national borders: in 1954 the United States Government signed international agreements on education with a number of countries. By such an agreement, for example, a foundation to promote wider exchange of knowledge and professional talents through educational contacts was set up in Norway, particularly to facilitate the use and exchange of local currencies made available by the governments for this purpose. Technical assistance in the educational field was also provided in a number of agreements extending and expanding previous programmes or establishing new projects, such as a co-operative programme of rural education in Haiti and a similar project with Mexico for an agricultural school.

# URUGUAY

## HUMAN RIGHTS IN URUGUAY IN 1954<sup>1</sup>

### 1. PRINCIPAL LAWS AND DECREES ADOPTED IN URUGUAY IN 1954 RELATING TO HUMAN RIGHTS

#### 1. *Personal Liberty*

Act No. 12092, of 7 January 1954 (*Diario Oficial* of 25 January 1954), declared an amnesty for public service employees and workers guilty of collective stoppage of work.

#### 2. *Freedom of Expression*

(1) Decree of 27 October 1954 (*Diario Oficial* of 29 November 1954) lays down rules for the guidance of police chiefs with regard to commercial advertising or political propaganda by loud-speaker.

(2) Decree of 4 August 1954 regulates the transmission of private messages deemed dangerous to the security of the State or contrary to the law.

#### 3. *Freedom of Assembly*

(1) Decree of 27 October 1954 (*ibid.*) lays down rules for the guidance of police chiefs for preventing interference with public meetings by loud-speakers used for commercial advertising or political propaganda.

(2) Decree of 19 November 1954 requires police departments to deal with applications in order of receipt, except where several dates are requested.

#### 4. *Freedom of Association*

Decree of 9 April 1954 (*Diario Oficial* of 4 May 1954) dissolved the association known as Movimiento Revolucionario La Escoba (The New Broom Revolutionary Movement) and ordered the arrest and trial in the ordinary courts of its "known active" members on the ground that proof having been obtained of their dissemination of ideas opposed to the State's democratic republican form of government, of the close link between their organization, goals and source of funds and foreign organizations and individuals, and of the commission of acts of violence against public institutions and the public authorities "as seen in the threat to sweep away the legally established organs of government and fill the streets with blood", there was ample evidence of the illegal activity covered by article 1, paragraphs 1 and 2, and article 5 of Act No. 9936, of 18 June 1936, and also strong presumptive evidence of the offences of unlawful attack on the constitution, association for purposes

of crime, and extortion as defined in article 132, paragraph 6, article 150 and article 345 of the Penal Code.

#### 5. *The Right to Education*

Act No. 12134, of 15 September 1954 (*Diario Oficial* of 24 September 1954), lays down that inter-department buses shall transport free of charge, as standing passengers, pupils attending state rural and suburban schools.

#### 6. *The Right to Limitation of Working Hours*

(1) Act No. 12030, of 27 November 1953 (*Diario Oficial* of 24 January 1954), ratified ILO Convention No. 43 for the regulation of hours of work in automatic sheet-glass works.

(2) Act No. 12030, of 27 November 1953 (*ibid.*) ratified ILO Convention No. 63 concerning statistics of wages and hours of work in the principal mining and manufacturing industries, including building and construction, and in agriculture.

(3) Act No. 12030, of 27 November 1953 (*ibid.*), ratified ILO Convention No. 67 concerning the regulation of hours of work and rest periods in road transport.

#### 7. *The Right to Hygienic and Safe Working Conditions*

(1) Act No. 12030, of 27 November 1953 (*ibid.*), ratified ILO Convention No. 62 concerning safety provisions in the building industry.

(2) Act No. 12030, of 27 November 1953 (*ibid.*), ratified ILO Convention No. 77 concerning medical examination for fitness for employment in industry of children and young persons.

(3) Act No. 12030, of 27 November 1953 (*ibid.*), ratified ILO Convention No. 78 concerning medical examination of children and young persons for fitness for employment in non-industrial occupations.

(4) Act No. 12030, of 27 November 1953 (*ibid.*), ratified ILO Convention No. 79 concerning the restriction of night work of children and young persons in non-industrial occupations.

(5) Act No. 12030, of 27 November 1953 (*ibid.*), ratified ILO Convention No. 89 concerning night work of women employed in industry.

(6) Act No. 12030, of 27 November 1953 (*ibid.*), ratified ILO Convention No. 90 concerning the night work of young persons employed in industry.

(7) Decree of 27 July 1954 (*Diario Oficial* of 11 August 1954) clarified certain provisions concerning the night work of young persons employed in industry.

<sup>1</sup> This note is based on texts, summaries and information received through the courtesy of Dr. Anibal Luis Barbagelata, Professor of Constitutional Law, Montevideo, government-appointed correspondent of the *Yearbook on Human Rights*.



### 8. *The Right to Fair Remuneration*

(1) Act No. 12030, of 27 November 1953 (*Diario Oficial* of 27 January 1954), ratified ILO Convention No. 63 concerning statistics of wages and hours of work in the principal mining and manufacturing industries, including building and construction, and in agriculture.

(2) Act No. 12030, of 27 November 1953 (*ibid.*), ratified ILO Convention No. 93 concerning wages, hours of work on board ship and manning.

(3) Act No. 12030, of 27 November 1953 (*ibid.*), ratified ILO Convention No. 99 concerning minimum wage fixing machinery in agriculture.

### 9. *The Right to Wage Protection*

Act No. 12030, of 27 November 1953 (*ibid.*), ratified ILO Convention No. 95 concerning the protection of wages.

### 10. *The Right of Workers' Families to Protection*

(1) Decree of 26 January 1954 increasing minimum family allowances.

(2) Decree of 24 August 1954 regulates Act No. 11618 concerning family allowances and the organization of the family allowance service.

(3) Act No. 12157, of 22 October 1954 (*Diario Oficial* of 11 November 1954), extended the family allowance system to rural workers.

### 11. *The Right of Working Women and Working Mothers to Protection*

(1) Act No. 12030, of 27 November 1953 (*Diario Oficial* of 27 January 1954), ratified ILO Convention No. 45 concerning the employment of women on underground work in mines of all kinds.

(2) Act No. 12030, of 27 November 1953 (*ibid.*), See 7(5) above.

(3) Act No. 12030, of 27 November 1953 (*ibid.*), ratified ILO Convention No. 103 concerning the protection of maternity.

(4) Decree of 7 December 1954 (*Diario Oficial* of 12 December 1954) implements ILO Convention No. 45 concerning the employment of women on underground work in mines of all kinds.

### 12. *The Right to Protection of Young Persons in Employment*

(1) Act No. 12030, of 27 November 1953 (*Diario Oficial* of 27 January 1954). See 7(2) above.

(2) Act No. 12030, of 27 November 1953 (*ibid.*). See 7(3), above.

(3) Act No. 12030 of 27 November 1953 (*ibid.*). See 7(4), above.

(4) Act No. 12030 of 27 November 1953 (*ibid.*). See 7(6), above.

(5) Act No. 12030 of 27 November 1953 (*ibid.*) ratified ILO Convention No. 58 fixing the minimum age for the admission of children to employment at sea.

(6) Act No. 12030 of 27 November 1953 (*ibid.*) ratified ILO Convention No. 59 fixing the minimum age for admission of children to industrial employment.

(7) Act No. 12030, of 27 November 1953 (*ibid.*), ratified ILO Convention No. 60 concerning the age for admission of children to non-industrial employment.

(8) Decree of 27 July 1954 (*Diario Oficial* of 11 August 1954) clarified certain provisions concerning night work of young persons employed in industry.

### 13. *The Right to Work*

(1) Act No. 12030, of 27 November 1953 (*Diario Oficial* of 27 January 1954), ratified ILO Convention No. 88 concerning the organization of the employment service.

(2) Act No. 12030, of 27 November 1953 (*ibid.*), ratified ILO Convention No. 96 concerning fee-charging employment agencies.

(3) Act No. 12030, of 27 November 1953 (*ibid.*), ratified ILO Convention No. 97 concerning the recruitment, placing and conditions of labour of migrants.

### 14. *The Right to Annual Holidays with Pay and the Right to Rest*

(1) Act No. 12030, of 27 November 1953 (*ibid.*), ratified ILO Convention No. 52 concerning annual holidays with pay.

(2) Act No. 12030, of 27 November 1953 (*ibid.*), ratified ILO Convention No. 54 concerning annual holidays with pay for seamen.

(3) Act No. 12030, of 27 November 1953 (*ibid.*), ratified ILO Convention No. 67 concerning rest periods in road transport.

### 15. *The Right of Workers to Organise*

(1) Act No. 12030, of 27 November 1953 (*ibid.*), ratified ILO Convention No. 87 concerning freedom of association and protection of the right to organise.

(2) Act No. 12030, of 27 November 1953 (*ibid.*), ratified ILO Convention No. 98 concerning the application of the principles of the right to organise and to bargain collectively.

### 16. *The Right of Workers to Protection against Occupational Accidents and Occupational Diseases*

(1) Act No. 12030, of 27 November 1953 (*ibid.*), ratified ILO Convention No. 42 concerning workmen's compensation for occupational diseases.

(2) Act No. 12030, of 27 November 1953 (*ibid.*), ratified ILO Convention No. 62 concerning safety provisions in the building industry.

(3) Decree of 30 March 1954 includes telegrapher's cramp among occupational diseases.

### 17. *The Right to Protection against Unemployment*

(1) Act No. 12094, of 26 February 1954 (*Diario*

*Oficial* of 12 March 1954), repealed a provision which prevented workers in the cold-storage industry, wool-warehousing and similar undertakings from receiving both insurance allowances and paid leave.

(2) Decree of 3 August 1954 regulates the system of unemployment allowances for workers in wool and leather warehouses and similar undertakings.

(3) Act No. 12173, of 28 December 1954 (*Diario Oficial* of 17 January 1954), establishes a system for promoting the re-employment of dismissed cold storage workers.

#### 18. *The Right to an Adequate Retirement Pension*

(1) Act No. 12133, of 27 August 1954 (*Diario Oficial* of 7 September 1954), established a special pension system for engine-room and boiler-room staff of ships flying the national flag and for engine drivers, attendants and firemen employed by the railways, electric power plants and other public undertakings.

(2) Act No. 12138, of 13 October 1954 (*Diario Oficial* of 25 October 1954), provides that former civil servants shall be entitled to receive retirement benefits provided that they have completed the number of years of service required by law and desist from legal action against the State.

(3) Act No. 12139, of 13 October 1954 (*ibid.*), extends the benefits of the retirement system of the Industry and Commerce Superannuation and Pension Fund to all persons engaged in any lawful gainful activity and who are not covered by any other system except lodging-house owners.

(4) Act No. 12143, of 19 October 1954 (*Diario Oficial* of 6 November 1954), facilitates and lays down rules for the pensioning of employers who are in debt to the Industry and Commerce Superannuation and Pension Fund.

(5) Act No. 12134, of 8 October 1954 (*ibid.*), extends benefits to certain employees of the official radio broadcasting service by means of a special superannuation fund.

(6) Act No. 12142, of 19 October 1954 (*ibid.*), lays down rules for membership of the Superannuation and Pension Fund for Rural and Domestic Workers, and of the Old-age Pensions Fund, simplifies the procedure and facilitates the payment of employers' contributions.

(7) Act No. 12169, of 21 December 1954 (*Diario Oficial* of 8 January 1954), describes a new pension system under the Bank Superannuation and Pension Fund and adopts a system for the periodic readjustment of pensions to current rates of pay.

#### 19. *The Rights of Civil Servants*

Act No. 12030, of 27 November 1953 (*Diario Oficial* of 27 January 1954), ratified ILO Convention No. 94 governing labour clauses in public contracts.

#### 20. *The Right to Migrate*

Decree of 14 July 1954 (*Diario Oficial* of 25 August 1954) approved a plan to admit into the country members of the families of alien residents.

### II. SUMMARY OF LEGAL PROVISIONS CONCERNING ELECTIONS

#### 1. *State Contribution to Campaign Costs of Political Parties*

Act No. 12145, of 19 October 1954 (*Diario Oficial* of 27 October 1954), establishes a fund to meet the campaign costs of political parties, to be allocated by the Electoral Court in proportion to the number of votes received by each party.

#### 2. *Authorization of Election Costs*

Act No. 12127, of 10 August 1954 (*Diario Oficial* of 27 August 1954), authorizes the Government to allocate from the general revenue a specified sum to be devoted by the Electoral Court to the payment of campaign costs.

#### 3. *Election Propaganda*

Decree of 27 October 1954 (*Diario Oficial* of 29 November 1954). See 2(1), above.

### III. PROVISIONS ADOPTED BY URUGUAY IN 1954 RELATING TO INTERNATIONAL CONVENTIONS CONCERNING HUMAN RIGHTS

(1) Act No. 12030, of 27 November 1953 (*Diario Oficial* of 27 January 1954), ratified ILO Conventions Nos. 42, 43, 45, 52, 54, 58, 59, 60, 62, 63, 67, 73, 77, 78, 79, 80, 87, 88, 89, 90, 93, 94, 95, 96, 97, 98, 99, 101 and 103<sup>1</sup> and established a system of penalties for their violation or the obstruction of supervision and control of their observance.

(2) Act No. 12158, of 22 October 1954 (*Diario Oficial* of 22 November 1954), extended the system of penalties established by Act No. 12030 of 27 November 1953 to the ILO Conventions ratified by Act No. 8950 of 5 April 1933.

(3) Act No. 12101, of 27 April 1954 (*Diario Oficial* of 7 May 1954), ratified the instrument for the amendment of the Constitution of the International Labour Organisation, adopted by the International Labour Conference at Geneva on 25 June 1953.

(4) Act No. 12122 of 7 July 1954 (*Diario Oficial* of 3 August 1954), ratified two Technical Assistance agreements with UNESCO for the establishment of a bibliographical centre in the national library.

(5) Decree of 7 December 1954 (*Diario Oficial* of 17 December 1954), implements ILO Convention No. 45 concerning the employment of women on underground work in mines of all kinds.

<sup>1</sup> See above.



# VENEZUELA

## DECREE NO. 101 REGULATING THE USE OF TRADE UNION CENTRES of 29 April 1954<sup>1</sup>

### SECTION I

#### PURPOSES OF TRADE UNION CENTRES

*Art. 1.* The basic purposes of the trade union centres are to foster the moral uplifting of workers through broader opportunities for cultural activities and to promote the development of a trade union movement meeting the requirements of the organizations concerned and the higher interests of the nation.

*Art. 2.* The trade union centres shall be used by trade unions for activities in harmony with their specific legal functions and shall serve as headquarters for services set up or instituted with the aim of fostering the general well-being of the workers.

The activities of trade union centres shall be classified as: social and trade union; intellectual and physical culture; and recreation and lodging. The compliance by trade union organizations with the administrative regulations concerning the operation of the trade union centres shall be without prejudice to the independence of those organizations.

The services responsible for the operation of trade union centres shall be attached to the Ministry of Labour.

...

[Section V, which consists of articles 8-11, sets out the procedure whereby a trade union may establish its headquarters in a trade union centre.]

### SECTION VI

#### RIGHTS OF THE REGISTERED TRADE UNIONS AND OF WORKERS AND MEMBERS OF THEIR FAMILIES

*Art. 12.* A registered trade union shall be entitled to use the general meeting rooms on condition that it submits a request to that effect, at least within the time-limit prescribed by the statutes of the trade union for the convening of the meeting.

A trade union may also make use of any other special facilities when authorized to do so by the director.

*Art. 13.* A registered trade union and the workers shall have the use of the premises intended for dining-

rooms, soda fountains and sports activities during the hours and according to the rules laid down by the director.

*Art. 14.* The workers shall likewise be entitled to attend the cultural and recreational functions organized by the office of the director and to avail themselves of the cultural and recreational services in accordance with the rules applicable to those services.

*Art. 15.* A trade union centre shall be open to:

1. Members of the registered trade unions and workers in general who are in possession of the necessary credentials issued by the director of the trade union centre;
2. The parents of any such member or worker;
3. His spouse;
4. His minor children;
5. His minor brothers and sisters.

Transient workers who are not guests of a trade union centre may be admitted there if they are in possession of temporary credentials issued to them for the purpose by the director.

### SECTION VII

#### OBLIGATIONS OF TRADE UNIONS AND OF THE WORKERS FREQUENTING TRADE UNION CENTRES

*Art. 16.* A trade union organization having quarters in a trade-union centre shall be required to:

1. Care for and maintain the furnishings of the centre;
2. Ensure that its members conduct themselves in a proper and orderly manner;
3. Refrain from activities or demonstrations alien to the purpose of trade unions;
4. Observe, in connexion with the holding of conventions or congresses of workers, the regulations made by the National Executive for the purposes of such gatherings.

*Art. 17.* Members of the registered trade unions and workers shall comply with the rules of the trade-

<sup>1</sup> The Spanish text of the decree appears in *Gaceta Oficial* No. 24429, of 30 April 1954. Translation by the United Nations Secretariat.

union centre and abide by the hours of opening and closing laid down by the office of the director.

*Art. 18.* In addition to acts prohibited by law, the following shall also be prohibited: possession of weapons; betting for money; conversations on political,

religious or racial subjects; and the sale or consumption of intoxicating beverages.

...

[Section IX, consisting of articles 20-21, concerns fees and charges.]

## WORKERS' TRAINING AND RECREATION INSTITUTE ACT of 21 June 1954<sup>1</sup>

### SECTION I ORGANIZATION OF THE INSTITUTE

#### *Chapter I*

#### THE INSTITUTE AND ITS FUNCTIONS

*Art. 1.* The Workers' Training and Recreation Institute shall be established as an organ of the public administration attached to the Ministry of Labour, with legal status and its own funds, separate from and independent of the National Treasury.

...

*Art. 3.* The functions of the institute shall be:

(a) To create, organize and maintain special establishments and services for the professional and technical training of workers, their children and other members of their families, in accordance with standards laid down by the Ministry of Education and the Ministry of Labour;

(b) To co-operate with the Ministry of Labour in all matters relating to better utilization of workers' leisure and annual holidays, with a view to ensuring the welfare of workers and their families; and likewise to co-operate with the Ministry in the application of measures adopted to this end;

(c) To assume responsibility for the management of holiday camps placed under its charge by the National Executive, in accordance with the regulations governing such camps;

(d) To co-operate with the Ministry of Labour in making available to workers and their families recreational facilities which will at the same time help to raise their cultural standards. For this purpose it may be given responsibility for the management of such artistic services as the National Executive may decide;

(e) To work in association with the Ministry of Labour in promoting tourist activities among the country's workers. It may likewise, in conjunction with the competent departments of the Ministry,

organize tours abroad for the technical and cultural development of the workers;

(f) To assist the Ministry of Labour in investigating the economic, social and cultural problems affecting workers, and in publicizing throughout the country, especially in workers' centres and in a manner suitable for their purposes, the results of its activities and of the studies based on them;

(g) To defray the cost of studies for workers, their children and other members of their families, to acquire technical knowledge or to improve their efficiency, in accordance with the regulations laid down for the purpose, such regulations to provide for the granting of scholarships for the purposes mentioned;

(h) By arrangement with the Ministry of Labour, to organize lectures, cultural exhibitions, libraries, publications, educational film shows and other such activities of various kinds, including particularly the preparation of vocational and trade union guidance schemes to promote technical training for the various occupations, with a view to improving the worker's standards;

(i) To administer the National Executive's trade union institute services through the Ministry of Labour and in the manner prescribed by the Executive;

(j) To draw up regulations for and to manage such services as it may establish in the exercise of its functions or as the executive branch of the Government may determine;

(k) To acquire, administer and assign movable and immovable property, to issue and acquire bonds or securities, preferably those guaranteed by the State or issued by autonomous agencies; to negotiate, transfer or realize such securities; in general to enter into such contracts as may be necessary to the performance of its functions; and especially to donate movable property. In all such operations previous consent of the Minister of Labour shall be required and the transaction shall be in keeping with the aims of the Institute.

<sup>1</sup> The Spanish text of the Act appears in *Gaceta Oficial* No. 24487, of 9 July 1954. Translation by the United Nations Secretariat.

# VIET-NAM

## LABOUR LEGISLATION

Ordinance No. 15, of 8 July 1952, promulgates the Viet-Nam Labour Code.<sup>1</sup> Chapter I (General provisions) provides in particular that forced or compulsory labour is forbidden except in certain instances which are strictly defined in the Labour Code. Chapter II contains regulations on apprenticeship. Chapter III deals with the making, contents, suspension and termination of contracts of employment, with the position of workers called to the colours, pregnant women and absence due to sickness, and with the recruitment of workers outside the place of work. It lays down, *inter alia*, that the total fines imposed under the rules in force in an undertaking may not exceed one-fourth of the daily wage, and that the proceeds shall be placed in a relief fund for the staff. Chapter IV deals with sub-contracting, which is forbidden as an occupation except under licence of the Labour Inspectorate. The chapter also determines the obligations of the sub-contractor and the employer to the workers. Chapter V is concerned with the making, application and extension of collective labour agreements: collective agreements must embody basic provisions regarding, *inter alia*, freedom of opinion and association for the workers, basic wages, conditions of engagement and dismissal and hours of work. Under the provisions of Chapter VII, the guaranteed minimum wage must be established by order of the regional governor acting on the recommendation of an advisory board. All women or children performing work equal in skill and output to that of an adult male worker are entitled to the same wage as such a worker. This chapter concerns also conditions of payment of earnings, sharing of gratuities, privileges and guaranties of salary claims, and the setting up of bursaries. Chapter VIII regulates the placement of workers. Placement offices are to be operated by the regional labour inspectorate and are to charge no fees. Chapter IX provides for the appointment of staff representatives in each undertaking; these are to be responsible, among other things, for ensuring that the provisions relating to the protection of workers and their social security are enforced, and referring to the labour inspectors any complaints respecting violations of these provisions. Chapter X regulates conditions of employment. Employers are required to keep an employers' register (*registre*

d'employeurs). The chapter regulates hours of work, night work, underground work, weekly rests, holidays and annual leave. Detailed provisions are made concerning the protection of children of both sexes and women. The age for admission to employment in any undertaking is established at fourteen years for both sexes. Children under eighteen years of age and women may not be employed on night work or underground work or kept on work which is recognized to be beyond their strength. Pregnant women and nursing mothers are protected by special provisions. Chapter XI lays down requirements for health and safety of work in enterprises, of whatever nature, public or private, religious or non-religious. This chapter contains general provisions on the observance of good morals and public decency and the organization of medical and sanitary services in enterprises, together with special provisions applicable to mine-workers and quarry-workers.

Compensation for employment accidents is dealt with in Chapter XII. Chapter XIII deals with labour disputes and their settlement. Individual disputes between employers and workers in connexion with the performance of contracts of employment are settled by labour courts established for that purpose. Collective disputes between an employer and not less than ten workers are settled by a conciliation and arbitration procedure. The chapter also governs occupational representation. Regional advisory boards and a national advisory board, composed of government, employers' and workers' representatives, are required to formulate opinions or recommendations in certain matters. The boards may also be consulted on all matters relating to labour, manpower and social security. Chapter XIV establishes an inspectorate of labour and social legislation responsible for ensuring that the statutory and administrative provisions relating to labour and social security are applied. It lays down the functions and powers of inspectors and medical officers of the labour inspectorate.

The penalties for violations of the provisions of the Labour Code and the arrangements for giving effect to the Code are set out in Chapter XV.

The conditions of recruitment and conditions of employment of workers recruited by agricultural enterprises are governed by ordinance No. 26 of 26 June 1953 (*Code du travail des entreprises agricoles*, Saigon, 1953).

<sup>1</sup> Vietnamese and French texts appear in *Code du travail et Recueil des textes d'application du code du travail*, Saigon, 1952.

# YUGOSLAVIA

## NOTE<sup>1</sup>

In the course of 1954 twelve federal laws and regulations having a particularly close bearing on the protection of human rights were enacted in Yugoslavia. In the same year Yugoslavia ratified eight international agreements, bilateral or multilateral, which were also of importance from the point of view of human rights.

In view of the volume of the relevant federal legislation and international agreements, legal provisions and judicial decisions of the People's Republics are not dealt with here, although they represent considerable material.

### I. FEDERAL LEGISLATION

Relevant federal legislation may be divided into six groups: constitutional provisions; and legislation on law courts, criminal procedure, social and health insurance, education and teaching, and property.

#### A. CONSTITUTIONAL PROVISIONS

1. The Act of 11 March 1954 amending articles 45, 46, 47, 48 and 51(2) of the Constitutional Act on the Bases of Social and Political Organization of the Federal People's Republic of Yugoslavia and on the Federal Organs of State Authority.<sup>2</sup>

This Act amends the above-cited articles of the Constitutional Act of 13 January 1953.<sup>3</sup> It determines more precisely the status and competence of the Council of Nationalities as a separate chamber of the Federal People's Assembly, thus further strengthening the constitutional principle of equality of rights of all Yugoslav peoples. The most important article of the Act is article 45, which now reads as follows:

"The members of the Federal Council elected by the representative bodies of the several people's republics or of the autonomous province or the autonomous region may convene as the Council of Nationalities and render decisions independently of the Federal Council, when the agenda of the house<sup>4</sup> includes any proposal concerning a constitutional amendment, the Federal Social Plan or the general federal law, or any bill regarding the equality of

nationalities in Yugoslavia or the relationship established by the Constitution between the Federation and the People's Republics.

"The Council of Nationalities shall convene on the request of the majority of deputies elected by the representative body of a people's republic or on the request of all the deputies elected by the representative body of the autonomous province or the autonomous region or of ten deputies elected by the representative bodies of any republic or autonomous unit.

"The Council of Nationalities shall be bound to convene when the agenda of the Federal Council includes a proposal for a constitutional amendment."

Article 46 was amended to read as follows:

"The Council of Nationalities shall also debate and determine whether any bill on the agenda of the Federal Council is consistent with the principle of equality of nationalities in Yugoslavia and with the relationship established by the Constitution between the Federation and the people's republics, and shall pass a resolution thereon.

The resolution of the Council of Nationalities may propose an amendment to the bill or recommend its rejection."

Other amended articles concern the procedure of work and decision of the Council of Nationalities and the settlement of possible conflicts between the Council of Nationalities and the Federal Council. The essential point is that no final decision can be taken on the matters enumerated in article 45 without the agreement of the Council of Nationalities, except as regards the Federal Social Plan. Should a disagreement arise concerning the Plan, the Federal Social Plan for the respective year as approved by the Council of Producers shall be applied if an agreed solution of this matter cannot be reached before the date when the implementation of the Federal Social Plan is to start.

As may be seen, the Council of Nationalities is in fact the third chamber of the Federal People's Assembly, though it does not meet regularly, but only at the request of the above-mentioned representatives of the people's republics, the autonomous province or the autonomous region, and for discussion of the questions mentioned above. In such cases, the Council of Nationalities is a Chamber of the Federal People's Assembly having full rights.

2. The Act on the validity of the Constitution, laws and other federal provisions in the territory

<sup>1</sup> Note prepared by Dr. Albert Vajs, Professor in the Faculty of Law, University of Belgrade.

<sup>2</sup> The Serbo-Croat text appears in *Službeni List Federativne Narodne Republike Jugoslavije* (Official Gazette of the Federal People's Republic of Yugoslavia) No. 13, of 24 March 1954.

<sup>3</sup> See *Tearbook on Human Rights for 1953*, p. 308.

<sup>4</sup> That is to say, the Federal Council, which is one of the houses of the Federal People's Assembly. See *Tearbook on Human Rights for 1953*, p. 308.

where the civil administration of the Federal People's Republic of Yugoslavia is extended by international agreement.<sup>1</sup>

This Act extends the Constitution, laws and other federal legal provisions to the territory which was formerly included in the Free Territory of Trieste, and which come under the civil administration of the Federal People's Republic of Yugoslavia by international agreement.<sup>2</sup>

Under article 3 of the Act all persons residing in the territory mentioned above on the day of coming into force of the Act, who were Italian nationals before the coming into force of the treaty of peace with Italy, enjoy equal rights and duties with other Yugoslav citizens.

Article 4 ensures to national minorities in this territory all rights recognized by the Constitution and laws to the national minorities in the Federal People's Republic of Yugoslavia.

Other articles provide for the gradual introduction of the civil administration and the substitution of Yugoslav laws for those hitherto in force.<sup>3</sup>

#### B. LAW COURTS

The three laws reviewed below are intended to provide for the further development and organization of work of the law courts, and for the adjustment of the judicial system to the changed constitutional provisions. The first, the Law Courts Act, represents the fundamental law on the organization of law courts, and contains in its first part constitutional principles on law courts. The provisions of these laws are not quite new: they are rather an elaboration of the foundations on which the judicial system was hitherto based. Yet they contain some essential innovations.

According to these laws, there are three types of law courts in Yugoslavia: general (regular), economic and military. All these three types of law court are ordinary courts, and therefore subject to the same basic principles. The uniform application of these principles is guaranteed by the fact that the Federal Supreme Court is the highest judicial organ over all the three types of law court, having the power to determine the legality of their decisions in the last instance.

The jurisdiction of these three types of court is mainly determined as follows: general (regular) law courts serve to try citizens, economic courts to try the disputes of economic organizations, and military courts to try military persons. There are some

deviations from this rule in favour of a criterion based upon the subject matter of the dispute.

The main judicial principles still remain: legality, the equality of citizens before the law and in court, the independence of courts in bringing verdicts and other decisions, participation of laymen (as assessors) in judgements and appointment of judges by election.

##### 1. *The Law Courts Act*<sup>4</sup>

The first part of this Act contains the constitutional principles on law courts. In this respect the first part of the Act (articles 1-15) should be considered as an integral part of federal constitutional provisions. Because of their importance we give here the articles of this part of the Act:<sup>5</sup>

##### *Part One.—Constitutional Principles on Courts of Justice*

*Art. 1.* In the Federal People's Republic of Yugoslavia justice shall be administered by regular, economic, and military courts of justice.

The organization and jurisdiction of economic and military courts shall be determined by special law.

*Art. 2.* Courts of justice may be established and abolished by federal law alone.

The jurisdiction of courts of justice may be modified by law alone.

*Art. 3.* Courts shall administer justice in conformity with the law and such other provisions as the Federal People's Assembly and the people's assemblies of the republics may enact.

Courts shall also apply other provisions enacted pursuant to this law and in conformity therewith.

*Art. 4.* The highest court in the Federal People's Republic of Yugoslavia shall be the Federal Supreme Court of Justice.

The Federal Supreme Court of Justice shall secure the uniform application of law.

The Federal Supreme Court of Justice shall review all court decisions within the limits prescribed by law.

*Art. 5.* Equal rights of judicial protection shall be guaranteed to citizens, as well as institutions and organizations.

Courts of justice shall guarantee to every citizen, institution and organization the rights recognized to them by law.

*Art. 6.* The right of appeal to a higher court against the judgements of courts in the first instance shall be guaranteed.

*Art. 7.* Courts of justice shall be independent in the bringing of verdicts.

*Art. 8.* Hearings shall as a rule be held in open court.

<sup>1</sup> The Serbo-Croat text appears in *Službeni List* No. 45, of 27 October 1954.

<sup>2</sup> Concerning the memorandum of understanding between the Governments of Italy, the United Kingdom, the United States and Yugoslavia regarding the Free Territory of Trieste, see pp. 398-400.

<sup>3</sup> The implementation of this Act is governed by a special detailed regulation of the Federal Executive Council (*Službeni List* No. 56, of 30 December 1954).

<sup>4</sup> The Serbo-Croat text appears in *Službeni List* No. 30, of 21 July 1954.

<sup>5</sup> The English translation follows closely that appearing in the journal of the Union of Jurists' Associations of Yugoslavia, *New Yugoslav Law*, No. 3-4, 1954, pp. 38-46.

*Art. 9.* The verdicts of courts may be modified or rescinded by the competent court only through the procedure determined by law.

*Art. 10.* Courts shall pronounce judgement in the name of the people.

*Art. 11.* Permanent judges and lay judges (assessors) shall participate in the administration of justice. The permanent and lay judges shall be equal in the administration of justice.

*Art. 12.* The permanent and lay judges of the regular and economic courts shall be appointed and relieved of their duties by people's assemblies and people's committees.

*Art. 13.* As a rule, cases shall be tried in council.<sup>1</sup>

The permanent and lay judges, or the permanent judges only, shall participate in the court councils.

The law shall determine which cases shall be tried by single judges and when the supreme courts shall sit in judgement in general sessions and court department sessions.

*Art. 14.* All state organs shall be bound to extend legal assistance to the courts of justice.

*Art. 15.* The provisions of chapter XIII of the Constitution of the Federal People's Republic of Yugoslavia of 31 January 1946 shall cease to have effect.<sup>2</sup>

The second part of the Act (articles 16–121) contains more elaborate provisions on regular courts, their jurisdiction, election of judges and qualifications for regular judges and assessors; rights, duties and responsibilities of judges; dismissal, cessation of service and relieving judges of their duties; and expert assistants, office clerks and court administration; and transitional and final provisions.

Of particular significance for the matter of human rights are articles 56, 58, 60, 67, 76 and 77, which read as follows:

*Art. 56.* Judges and assessors shall be free to state their opinions on all questions which they may be called upon to decide.

A judge or assessor may not be made answerable for his vote unless it is established that in casting it he was committing a criminal offence.

...

*Art. 58.* Judges and assessors shall perform their judicial duty according to law and their conscience.

Any person who influences a judge or assessor to return an unlawful verdict or who abuses judicial authority shall be guilty of a criminal offence.

...

*Art. 60.* Judges and assessors shall ensure that

<sup>1</sup> In the present note, "in council" (vijeću) refers to the hearing of a case by a court consisting of several judges, as distinct from a hearing by a single judge.

<sup>2</sup> Chapter XIII (articles 115–123) of the Constitution of 1946 dealt with the People's Courts.

citizens, organizations and institutions are informed as soon as possible of the rights conferred on them by law.

They shall conduct an exhaustive examination of the circumstances and establish the facts necessary to arrive at a lawful verdict.

...

*Art. 67.* Judges and assessors shall be answerable for any damage they may cause to the State by unlawful acts committed in the course of their work.

The State shall be liable for any damage caused by judges or assessors to citizens or legal persons by unlawful acts committed in the course of their work.

...

*Art. 76.* Judges and assessors may be relieved of their judicial duties solely in the cases and through the procedure laid down in the present Act.

*Art. 77.* Relieving judges and assessors of their duties shall be effected by the representative body which appointed them...

## 2. *The Economic Courts Act*<sup>3</sup>

According to this Act, economic courts are regular courts trying the disputes and other matters of significance for the economy placed within their competence by law.

The constitutional principles on law courts as specified in the Law Courts Act apply to economic courts also (article 1).

Other provisions of this Act are of no interest for our review. In principle they are similar to the provisions contained in the second part of the Law Courts Act, naturally with appropriate modifications required by the nature of economic courts.

## 3. *The Military Courts Act*<sup>4</sup>

According to this Act, military courts are regular courts trying criminal offences committed by military persons and other matters placed within their competence by law. The constitutional principles on law courts specified by the Law Courts Act apply to the military courts also (article 1).

Of more particular interest for this review are articles 52, 56, 69 and 70.

The provisions of the general Code of Criminal Procedure apply to the criminal proceedings in military courts, if not otherwise provided for by the present Act (article 52).

Counsel for the defendant may be not only an army officer or military official, but also an advocate (article 56).

Custody must not last more than three days and

<sup>3</sup> The Serbo-Croat text appears in *Službeni List* No. 31, of 27 July 1954.

<sup>4</sup> The Serbo-Croat text appears in *Službeni List* No. 52, of 15 December 1954.

is effected upon decision of the authorized military commander or the organ of internal affairs. After this period the defendant may be retained in custody only upon a decision of the military investigating judge extending the term of custody (article 69).

Custody may be extended for more than three months but not beyond nine months and only on the basis of a decision by the Supreme Military Court (article 70).

Assessors participate in trials of military courts both in the first and the second instance.

### C. CRIMINAL PROCEDURE

#### 1. *Code of Criminal Procedure*<sup>1</sup>

(a) The new Criminal Procedure Code, which entered into force on 1 January 1954, replaced the Criminal Procedure Act of 1948.<sup>2</sup> In view of the great changes that had taken place in social and political conditions between 1948 and the time of enactment of the new Code, and certain deficiencies in the earlier Criminal Procedure Act, it was considered more expedient to enact a completely new law on this subject than to amend and supplement the earlier Act with a great number of new provisions.

The Criminal Procedure Act of 1948 contains, indeed, all the basic principles included in the new Code, but they are not so consistently implemented and elaborated as they are in the new Code. In enacting the new Code the underlying idea was to extend the jurisdiction of county courts, which are intended to serve as the basic first instance judicial organs for more important matters, and also to ensure a more direct participation of supreme courts in trials of more important cases. The purpose was also to transfer the investigation proceedings as far as possible to the competence of courts and to limit the functions of the public prosecutor.

The new Code lays greater emphasis on the decisive role of the court in criminal processes. The new Code also offers considerably stronger guarantees for the protection of the rights of the injured person in criminal proceedings, and especially of the rights of the defendant during the inquiry and investigation. The modifications and additions introduced in the new Code are not all of equal importance; some of them are fundamental, while the others are of a more technical nature. Fundamental modifications concern mostly the provisions on court jurisdiction, preliminary proceedings (inquiry and investigation), legal remedies and the position of the public prosecutor in criminal proceedings. A glance at these modifications will show that the new Code of Criminal Procedure strengthens in a considerable measure

legality and judicial process as vital factors for the further democratic development of the country.

(b) The new Code, taking account of the socio-political development of the country and of achievements in the modern science of criminal procedure, lays down the following main principles: the principle of lawfulness in the conduct of criminal proceedings (article 2); the principle excluding conviction other than upon accusation (article 11); the principle of legality in instituting criminal proceedings *ex officio* (article 12); the principle of trying in council (article 13); the principle of material truth (article 9); the principle of free appraisal of evidence (article 10); the principle that only evidence seen or heard directly by the Court may be taken into account (articles 264, 287, 289, 298 and 305); the principle of oral hearing (articles 297, 298, 305 and 312); the principle according to which the judge is independent of both the prosecution and the defence and examines the contradictory evidence submitted by the two parties (articles 275, 318-321 and 347); the principle of publicity (articles 270 and 271); and the principle of the material and formal guarantee of defence (articles 4 and 321).

Two instances are available for the trial of most criminal offences, but a third instance is also available for grave criminal offences for which the heaviest punishments are inflicted, so that such cases are subject to direct control of the supreme courts.

The principles stated above are not only contained in the legal clauses mentioned here, but also maintained in the whole approach of the Code and in many of its specific provisions. In fact, these principles are not the only ones on which the Code is based. All its principles should be considered in connexion with the general legal and organizational principles applied in Yugoslavia. Thus, for instance, the constitutional principles of the independence of the law courts, the participation of assessors in trials, the right to appeal, etc., find a direct confirmation in the provisions of this Code. Naturally, these principles have no absolute application. But they all serve the main purpose of criminal procedure as stated in article 1 of the Code—namely, to punish real offenders and abstain from punishing the innocent and from effecting any illegal restraint of their rights.

(c) The principles and provisions of criminal procedure may also be separately considered from the point of view of human rights. In this respect it should be pointed out, as a matter of particular interest, that the new Code takes great account of the relevant principles of the Universal Declaration of Human Rights of 10 December 1948,<sup>3</sup> and of the provisions contained in the draft Covenant on Human Rights, which is still in the phase of preparation. If we compare the relevant clauses of the Universal Declaration on Human Rights and of the draft

<sup>1</sup> The Serbo-Croat text was published in *Službeni List* No. 40, of 30 September 1953.

<sup>2</sup> A summary of this Act was published in the *Tearbook on Human Rights for 1948*, pp. 259-260.

<sup>3</sup> The text of the Universal Declaration of Human Rights appears in *Tearbook on Human Rights for 1948*, pp. 466-468.



Covenant with the provisions of the new Yugoslav Code of Criminal Procedure, we shall easily see not only that the new Code takes due account of them, but that it exceeds by far the obligatory minimum set forth in these texts for protection of the rights and freedoms and personal dignity of men, in so far as criminal procedure is concerned. This is evident not only from the basic principles of the Code, but also from their implementation through a series of concrete provisions of this Code.

The principles of article 5 of the Universal Declaration on Human Rights are extensively applied in articles 212, paragraph 6, 247, paragraph 3, 194, paragraphs 2 and 3, and 195, paragraph 1 of the Code. The principles of article 8 of the Declaration are particularly contained in articles 183, paragraph 4, 187, paragraph 4, 154 and 172. The principles of article 9 of the Declaration are fully reflected in several articles of the Code, especially in article 182. The principles of article 10 of the Declaration are guaranteed not only by the constitutional provisions on independence of courts and their exclusive reliance on laws, but also by a series of provisions of the new Code concerning the organization of law courts and their material and territorial jurisdiction, the disqualification of judges, publicity of trials, legal remedies, etc. The principle contained in article 11 (1) of the Declaration is extensively represented in articles 1 and 3 of the Code, and also reflected in other provisions. The principle contained in article 14 (1) and (2) of the Declaration is fully confirmed not only by constitutional provisions, but also by the express provision of article 464 of the Code.

Apart from the above-mentioned concepts, the Code also takes due account of those expressed in the relevant clauses of the draft Covenant on Human Rights, as it was at the time of enactment of the Code. In addition to what we have said above concerning some articles of the Universal Declaration, we might also stress the clauses of the Code relating to custody and confinement (articles 182 and 190); interrogation of persons deprived of liberty (articles 184 and 185); the obligation of informing the defendant already at the first interrogation of the offence he is charged with and of the grounds of accusation (article 4, paragraph 1); communication of the decision on custody (article 183, paragraph 3); bail (articles 177 and 180); the right to appeal against the decision on custody and confinement (articles 183, paragraph 4, and 190, paragraph 5); the right to compensation for unlawful keeping in custody and confinement (articles 8 and 479).

As regards the humane treatment of persons deprived of liberty, of particular importance are the provisions of articles 194-199 of the Code.

Protection against arbitrary and illegal interference with the personal life, honour, dignity, lodgings and correspondence of citizens is particularly secured by articles 200-204 and 208 of the Code.

The principle of just and public trial before independent and impartial courts is guaranteed by the clauses concerning the competence and composition of courts (articles 16-37); disqualification of judges (articles 38-43); public nature of the principal hearing (articles 270-273 and 425); presumption of innocence (article 3); the right of the defendant to counsel and appointment of counsel *ex officio* (articles 66, 69, 70 and 410, paragraph 2); the right of the defendant to refuse to answer questions (article 212, paragraph 2); special procedure for minors (articles 414-435); and compensation of unjustly convicted persons (articles 8 and 472-478).

(d) The Code of Criminal Procedure is divided into three parts: the first part contains general provisions, the second deals with the conduct of proceedings, and the third special procedures. Because of its size, the second part is divided into four sections: preliminary proceedings, principal hearing and judgement, procedure concerning legal remedies, and special provisions on proceedings in district courts and procedure in respect of minors.

(e) The following is a brief review of the most important innovations of the Code in relation to the previous Act of 1948.

(i) The first chapter of the first part (articles 1-15) contains basic principles. Because of their importance articles 1-13 are stated here verbatim:<sup>1</sup>

*Art. 1.* The present Code establishes the rules which assure that no innocent person shall be convicted and that deserved punishment shall be pronounced against those guilty under the conditions envisaged by criminal law and on the basis of lawfully conducted proceedings.

Prior to the passing of a legally valid sentence defendants may have their freedom or other rights restricted solely under the conditions determined by the present Code.

*Art. 2.* Punishments, security measures and educational-corrective measures may be pronounced against perpetrators of criminal offences only by the competent court in proceedings which were instituted and carried out pursuant to the present Code.

*Art. 3.* The individuals against whom criminal proceedings are instituted shall not be considered guilty until their criminal liability for the criminal offence committed is established by legally valid judgement.

*Art. 4.* The defendant must be informed of the offence for which he is held liable and of the grounds of the charge at his first interrogation.

It must be made possible for the defendants to make a statement on all the facts and evidence which are in their favour.

<sup>1</sup> The English translation of the articles quoted here, as well as of those quoted further below, follows closely that appearing in the journal *New Yugoslav Law*, of the Union of Jurists Associations of Yugoslavia, No. 3-4, 1953, pp. 25-76, and No. 1-2, 1954, pp. 27-50.



*Art. 5.* The indictment and evidence must be communicated to the defendant in the language he understands.

Defendants who do not understand the language in which the proceedings are conducted shall be afforded facilities to follow the progress of the proceedings through an interpreter.

*Art. 6.* It is prohibited and punishable to extort a confession or any other statement from the defendant during the course of criminal proceedings.

*Art. 7.* The defendant shall be entitled to conduct his own defence or to conduct his defence with the expert assistance of the counsel for defence whom he himself chooses from the list of advocates. In the event of the defendant's failure to appoint a counsel for defence, the court shall, with the object of securing defence, appoint a counsel for defence to the defendant where provided for under the present Code. The defendant must be afforded sufficient time for preparing his defence.

*Art. 8.* The individual who is unjustly sentenced or unlawfully deprived of liberty through being held in custody or in confinement shall be entitled to indemnity.

*Art. 9.* The court and the state organs who participate in criminal proceedings shall be bound to establish truly and completely the facts which are relevant to making a lawful decision. They shall be bound to examine and establish with equal attention both the facts militating against the defendant and those in his favour.

*Art. 10.* The right of the court and of the state organs which participate in criminal proceedings to appraise the existence or nonexistence of facts shall be neither bound nor restricted by separate rules of evidence.

*Art. 11.* Criminal proceedings shall be instituted on the request of the authorized prosecutor. For offences which are liable to prosecution by the State the authorized prosecutor shall be the public prosecutor, and for offences which are liable to prosecution by private indictment the authorized prosecutor shall be the private complainant. Should the public prosecutor find that there exist no grounds for instituting or continuing criminal proceedings, his place may be taken by the injured party as the prosecutor under the conditions determined hereunder.

*Art. 12.* The public prosecutor shall be bound to institute criminal prosecution where evidence exists that a criminal offence was committed which is subject to prosecution by the State.

*Art. 13.* In criminal proceedings courts shall try in council, and supreme courts shall also make decisions in general sessions.

(ii) One of the innovations introduced in the Code is the institution of the injured person as subsidiary prosecutor. This institution consists in the opportunity offered to the person whose right has been violated

or jeopardized by a criminal offence to undertake prosecution if the public prosecutor fails to do so or abstains from further prosecution.

In that case the injured person takes the place of the public prosecutor and assumes all rights belonging to him, except those vested in him as a public organ.

(iii) The material competence of county courts as first instance courts is extended, so that they are competent to try, with some exceptions, all criminal offences for which the punishment of imprisonment for more than two years is prescribed.

(iv) Light criminal offences falling within the competence of district courts are tried by a single judge.

On the other hand, all criminal offences for which a punishment of death or imprisonment for twenty years may be pronounced by law are tried by county courts in a council of five. This council consists of two judges and three assessors. Other criminal offences are tried by county courts in a council of three, composed of one judge and two assessors.

(v) The public prosecutor is deprived of some of his former powers. He only files the request for prosecution, and does not carry out the inquiry and investigation. He is no longer entitled to order custody and confinement. These measures are now transferred mainly to the competence of the investigating judge. The request for reopening of criminal proceedings is no longer within the competence of the public prosecutor of the People's Republic; it may be filed now both by the public prosecutor of the court trying the case in the first instance, and by the convicted person, and his counsel, and after the death of the convicted person also by his nearest relatives.

(vi) According to the new Code, the defendant may have a counsel throughout the whole criminal proceedings; the powers of the counsel during inquiry and investigation are specified. Appointment of counsel is obligatory in proceedings for criminal offences for which the punishment of death or imprisonment for more than ten years is provided by law, or if the defendant is tried in his absence. Appointment of counsel is obligatory if the defendant is a minor person, dumb, deaf or unable to defend himself with success. In such cases the district court may also appoint a counsel, although the presence of a counsel is not obligatory in such courts.

(vii) Some of the most significant innovations of the new Code concern important questions relating to preliminary proceedings. Inquiry is conducted by the investigating judge, the district court judge or the authorized organ of internal affairs, at the request of the public prosecutor.

The investigating judge of the county court conducts investigation at the request of the public prosecutor. The investigating judge may charge the district court or the authorized investigation organ of internal affairs with the conduct of investigation

or of various investigation steps, but he can at any time resume the conduct of an investigation which he had entrusted to the organs mentioned above.

Investigation is obligatory in criminal offences for which the punishment of death or imprisonment for twenty years is provided by law, or if it is necessary to order confinement before the filing of the indictment.

(viii) The innovations concerning the custody and confinement during investigation are also very significant.

Custody is ordered by the investigating judge, the district court judge or the authorized organ of internal affairs. It lasts for not more than three days. Only in complicated cases may custody be extended upon decision of the investigating judge or the district court judge, but not for more than twenty-one days. The arrested person is entitled to appeal to the county court against all decisions in favour of custody. In the proceedings before district courts custody may not last for more than fifteen days.

Confinement during investigation may be ordered only by the investigating judge. Confinement ordered by decision of the investigating judge may not last for more than two months, including the time spent in custody. An order of the county court council may extend the confinement for not more than one month. Further extension of the confinement is possible only upon the decision of the Supreme Court Council of the People's Republic or the autonomous region, and not for more than three months. For particularly important reasons further extension of the confinement is permitted by decision of the Federal Supreme Court Council, but not for more than three further months. Thus the confinement during investigation can in no case last for more than nine months.

(ix) In contrast with the earlier law, the complaint of the public prosecutor against decision for release of the defendant does not stop the execution of the decision. The defendant is released immediately and a complaint of the public prosecutor against such a decision cannot suspend its execution.

(x) As regards legal remedies against the judgement, the Code provides for a third instance if the punishment of death or of imprisonment for life has been pronounced, and also if the findings of fact of the court trying the case in the second instance are different from those of the court of first instance.

The Code entitles a wider number of persons to file a complaint in favour of the convicted person.

(xi) The exceptional legal remedy of reopening of criminal proceedings may be used now by both the public prosecutor and the convicted person, and after his death also his relatives, while formerly this was exclusively within the power of the public prosecutor of the People's Republic.

(xii) The innovation in the proceedings against

minors is the institution of permanent chairmen of the councils trying only the cases of minors. Minors under 16 years of age cannot be tried together with adult persons, and minors of 16 or more may be so tried only in exceptional cases, if so decided on justified grounds by the county court council.

A series of other clauses of the Code provide for special proceedings against minors, as distinct from the proceedings against adult defendants.

(xiii) A very important innovation of the new Code is the institution of indemnification to unjustly convicted persons. A person unjustly convicted may demand compensation for material damage suffered in consequence of the sentence. After his death, this right of the convicted person is transferred to his marital partner and to the relatives whom he is under a legal obligation to maintain.

(xiv) The Code provides for special measures intended as far as possible to ease the position of the defendant in preliminary proceedings. The Code forbids every use of force or threat against the defendant, and requires that his person and dignity shall be respected in preliminary proceedings. Leading questions are prohibited; the defendant is not bound to answer questions.

(xv) As regards the position of the defendant in preliminary proceedings, two other facts deserve to be particularly emphasized. First, while under custody or confinement the defendant is ensured eight hours of uninterrupted rest in the course of every day, during which he cannot be interrogated. Secondly, the Code expressly forbids the use of narcotics (narco-analysis) and other medical and similar means and methods for extraction of confessions from the defendant or the witnesses.

(f) The provisions reviewed here touch only upon some of the most significant features of the new Code concerning human rights, as it is naturally impossible to give in a brief summary a full picture of a voluminous Code containing 484 articles.

(g) The following extracts from the new Code, which seem to be of particular interest from the point of view of human rights, include some provisions already commented on:

## PART ONE.—GENERAL PROVISIONS

...

### CHAPTER VI.—COUNSEL FOR THE DEFENCE

*Art. 66.* The defendant may have a counsel for defence throughout the course of criminal proceedings.

On the occasion of his first interrogation or on the occasion of communicating the decision whereby he is to be taken into custody, the defendant shall be advised of his right to counsel...

*Art. 69.* Where the defendant is a minor, mute, deaf or incapable of defending himself successfully he must have a counsel for defence as soon as inves-

tigation is opened or an indictment is filed directly after the inquiry.

After the filing of the indictment the defendant must have a counsel for defence when proceedings are conducted in connexion with a criminal offence for which the law provides the death penalty or punishment of more than ten years' hard labour or where the defendant is tried *in absentia* (article 283).

When the defendant himself fails to appoint a counsel for defence in cases of obligatory defence, as provided for in the preceding paragraphs, the president of the court shall be required to appoint a counsel for defence. Where a counsel for defence is appointed for the defendant by the State after the filing of the indictment the defendant shall be duly advised of the fact at the time when the indictment is presented.

An appointed defence counsel shall be a fully qualified advocate, except that if there are not sufficient advocates at the location of the court the function of defence counsel may be entrusted to another person with legal qualifications and capable of assisting the defendant.

*Art. 70.* When conditions for obligatory defence do not exist and the proceedings are conducted before a county court, the defendant may, at his request, have a counsel for defence appointed to him, if, because of his financial position, he is unable to bear the defence costs.

The request for appointment of a defence counsel pursuant to the preceding paragraph may be made solely after the filing of the indictment. Decision on the request shall be made by the president of the council, and the defence counsel shall be appointed by the president of the court. The appointment of such defence counsel shall be governed by paragraph 4 of article 69 of this Code.

...

## PART TWO.—THE COURSE OF PROCEEDINGS

### A. Preliminary Proceedings

#### CHAPTER XV.—INQUIRY

...

*Art. 154.* During the course of the inquiry parties may file complaints against procrastination in proceedings and other irregularities in proceedings...

#### CHAPTER XVI.—INVESTIGATION

...

*Art. 172.* Parties may always complain to the president of the county court because of procrastination in proceedings and other irregularities during the progress of investigation.

*Art. 173.* The measures which may be taken against the defendant to assure his presence and for the effective conduct of criminal proceedings are summons, arraignment, the promise of the defendant

that he will not leave his residence, bail, custody and confinement.

In deciding which of the aforesaid measures it should apply the competent organ shall adhere to the conditions prescribed for the application of individual measures, taking care not to apply a severe measure where the same purpose is attainable with a milder measure.

Such measures shall also be terminated *ex officio* when the reasons for their use cease to exist, or replaced by another and milder measure, should the necessary conditions be met.

#### CHAPTER XVII.—MEASURES FOR ASSURING THE PRESENCE OF THE DEFENDANT AND THE EFFECTIVE CONDUCT OF CRIMINAL PROCEEDINGS

...

##### 6. Custody and Confinement

*Art. 181.* Confinement and custody may be decreed only under the conditions specified in the present Code.

All organs which participate in criminal proceedings shall be bound to try to reduce custody and confinement to the shortest possible time.

Throughout the course of the proceedings custody and confinement shall be subject to rescission as soon as the reasons on the basis of which they were decreed have ceased.

*Art. 182.* Confinement shall always be decreed against individuals concerning whom there exist grounds of suspicion that they have committed a criminal offence for which the death penalty is provided under the law.

Provided grounds exist for suspicion that an individual has committed some other criminal offence, custody may be decreed:

(1) If such individual is in hiding or if he has no permanent residence or if his residence is unknown, or if his identity cannot be established because he lacks the necessary documents or because his documents are suspect, or if there should exist other important reasons why it is suspected that he will abscond;

(2) If there should exist justified fear that he will foil inquiry or render it difficult by influencing witnesses, experts or accomplices or by destroying evidence of the criminal offence;

(3) If exceptional circumstances should justify the fear that he will repeat a criminal offence or carry to completion an attempted criminal offence or commit a criminal offence he threatens to commit.

The individual caught in the act of committing a criminal offence which is subject to prosecution by the State may be deprived of liberty by anyone. The individual deprived of liberty must be delivered at once to the investigating judge, the judge of the district court or the organ of internal affairs, and

where this is not practicable these organs must be notified at once.

*Art. 183.* Custody may be decreed by the investigating judge, the judge of the district court or the authorized organ of internal affairs.

Custody shall be decreed by written decision which shall indicate: the given name and the surname of the defendant, the criminal offence of which he is suspected, the legal grounds for his being taken into custody, instructions on the right to appeal, a brief justification, the official seal and the signature of the authorized official who is decreeing custody.

The decision on custody shall be communicated to the person being taken into custody when he is deprived of liberty, and not later than twenty-four hours from the time he was taken into custody.

Those taken into custody may appeal against the decision on custody to the council of the county court within twenty-four hours after having been taken into custody or on the occasion of the first interrogation in inquiry. The appeal together with a copy of the minutes on the interrogation of the defendant and the decision on custody shall be transmitted immediately to the council of the county court which shall be bound to reach a decision within forty-eight hours. The execution of the decision shall not be subject to staying by the appeal.

*Art. 184.* The investigating judge shall be bound to interrogate the person taken into custody and brought before him, or taken into custody on his orders, within twenty-four hours of the time when the defendant was brought before the judge or taken into custody.

Directly after the interrogation of the defendant the investigating judge shall decide whether he will release the defendant.

If the investigating judge believes that the accused should be detained and no proposal to that effect has been made by the public prosecutor the judge shall invite such a proposal.

If the public prosecutor should fail to make such a proposal within three days, the investigating judge shall release the defendant.

*Art. 185.* The judge of the district court and the authorized organ of internal affairs upon whose decision an individual has been taken into custody shall be bound to interrogate such individual within twenty-four hours of the time of his being taken into custody.

Immediately after the interrogation of the individual who was taken into custody the judge of the district court or the authorized organ of internal affairs shall decide whether they will release him or keep him in custody or bring him before the investigating judge.

...

#### 7. Treatment of those in Custody or Confinement

*Art. 194.* Custody shall be served in the prison of the organ which has decreed it, and confinement

pending trial in the prison of the organ which is conducting an investigation or to which the investigation was entrusted. Where the inquiry or investigation is being performed by the court itself, custody or confinement shall be served in separate court premises in the prison of the organ of internal affairs. Custody or confinement shall invariably be served in such premises after the filing of indictment.

During the serving of custody or confinement the person and the dignity of the defendant may not be offended.

Only those restrictions may be applied against those in custody or confinement which are necessary to prevent escape or collusion that could be prejudicial to the successful conduct of the investigation.

Persons of opposite sex may not be imprisoned in the same room, nor may minors be imprisoned with persons who are of age. Normally the persons who have participated in the same criminal offence may not be placed in the same room; nor may persons serving sentences occupy the same room as those in custody or confinement.

*Art. 195.* Those in custody or confinement shall be entitled to eight hours' uninterrupted rest every twenty-four hours. In addition, they shall be afforded at least two hours' movement out of doors daily, provided the prison disposes of suitable enclosed space.

Those in custody or confinement shall be entitled to take meals at their own expense, to wear their own clothes and to use their own bedding and to obtain at their own expense books, newspapers and other things that meet their regular needs, provided this is not prejudicial to the successful conduct of proceedings. The pertinent decision shall be the responsibility of the organ conducting the inquiry or investigation.

Those in custody or confinement may not be employed for any work, except that necessary for the maintenance of cleanliness in the room they occupy.

*Art. 196.* By permission of the organ conducting the investigation, and under its supervision or the supervision of the person designated by it, those in confinement may, within the bounds of house rules, be visited by close relatives, and on their request they may be visited by a physician or other persons. Individual visits may be barred if liable to be prejudicial to the investigation.

Those in confinement may correspond with persons outside the prison with the knowledge and under the supervision of the organ conducting the investigation. This organ may forbid the sending or receiving of letters and other material prejudicial to the investigation. The sending of applications, petitions or appeals may never be forbidden.

Those in custody for more than three days shall

have the rights quoted in paragraphs 1 and 2 of this article. The pertinent permission shall be granted by the organ conducting the inquiry which shall also be responsible for supervision.

*Art. 197.* In the event of breaches of discipline by persons in custody or confinement, the investigating judge or the organ which has decreed the custody or which is conducting the investigation may pronounce a disciplinary punishment by restricting visits, correspondence and the right of procuring food at the person's own expense.

Against the decision on punishment pronounced pursuant to the foregoing paragraph, those affected may appeal within twenty-four hours after the decision has been communicated to them. Where the decision on punishment was passed by the investigating judge, or the judge of the district court, the appeal shall be considered by the council of the county court, and, where such decision was passed by the authorized organ of internal affairs, the appeal shall be considered by its superior organ during inquiry, and the council of the county court during investigation. The appeal shall not stay the execution of the decision.

*Art. 198.* The president of the county court or the judge designated by him shall visit at least once a week those in custody or confinement in the court premises of the prison and, provided he considers it necessary, shall inform himself, even without the presence of the superintendent or wardens, regarding the food of those in custody or confinement, how they obtain other necessities and how they are treated.

In district centres the supervision over those in custody or confinement in the court premises of the prison of the organs of internal affairs, described in the preceding paragraph, shall be exercised by the president of the district court.

The inspections described in the preceding paragraphs may also be attended by the public prosecutor.

The president of the county court and the investigating judge may at any time visit all those in confinement, speak with them and receive complaints from them.

*Art. 199.* The house rules in prisons for the serving of custody or of confinement shall be determined by special regulations.

#### CHAPTER XIX.—INDICTMENT AND PETITION AGAINST INDICTMENT

*Art. 254.* The defendant shall be entitled to petition against the indictment within three days of its delivery. The court shall instruct the defendant concerning this right of his when the indictment is delivered...

#### C. Procedure on Legal Remedies

##### CHAPTER XXIII.—REGULAR LEGAL REMEDIES

##### 1. Appeal against the Judgement of the Court of First Instance

...

(e) Limitations on examination of the judgement in the first instance.

...

*Art. 355.* Where only an appeal in favour of the defendant has been made, the judgement may not be altered to his detriment. In such a case the court may not convict the defendant pursuant to a severer criminal law or sentence him to a severer punishment than he was sentenced to by the court of first instance.

...

##### CHAPTER XXIV.—EXTRAORDINARY LEGAL REMEDIES

##### 1. Reopening of Criminal Proceedings

...

*Art. 385.* Criminal proceedings shall always be reopened where a person was sentenced *in absentia* (article 283) as soon as it is possible to hold the trial in his presence...

##### 2. Exceptional Commutation of Punishment

*Art. 386.* Commutation of a legally pronounced punishment shall be granted if circumstances arise after the judgement has assumed legal force which did not exist at the time of judgement or were not known to the court although they existed, if those circumstances would obviously have caused a milder punishment to be imposed had they existed or been known.

...

##### D. Special Provisions on Procedure before District Courts and on Procedure in respect of Minors

##### CHAPTER XXVI.—PROCEEDINGS AGAINST MINORS

*Art. 414.* Cases against minor defendants shall always be heard by the council.

*Art. 415.* ...Assessors in criminal proceedings against minors shall be appointed from the ranks of professors, teachers, educators or other persons having experience in the education of minors.

...

*Art. 421.* Throughout the course of any proceedings at which the minor defendant is present, the court or the organ of inquiry or investigation shall proceed with special caution, in order to ensure that the proceedings do not prejudice his further development.

In interrogating minors, their degree of development, sensitivity, living conditions and other circumstances indicating the need of special treatment should be particularly kept in mind.

Should it appear during the course of the proceed-

ings that it would be dangerous for a minor to remain in his previous environment, adequate temporary measures may be taken in agreement with the organs of guardianship for his protection, care and accommodation. Such measures may be undertaken also where there exist conditions for decreeing custody or confinement against the minor.

...

*Art. 424.* When the public prosecutor has filed an indictment against a minor, a petition against such indictment may be submitted by the defence counsel even against the will of the minor.

A minor may never be tried *in absentia*.

Apart from the persons who are summoned to the hearing (article 264), the parents of the minor and guardian shall also be summoned. The organ of guardianship shall also be informed.

*Art. 425.* The public shall be excluded from the trials of minors. Where both a minor and a person of full age are tried at the same principal hearing, the council may exclude the public if it is found that a public trial might have a harmful effect upon the minor.

The principal hearing may always be attended by the parents and guardian of the minor, and the individuals who are engaged in the protection and education of minors may also be allowed to be present.

...

*Art. 427.* Where the court finds on the basis of the principal hearing that an educational corrective measure should be applied to the minor, it shall make a decision in which it shall indicate, without pronouncing the minor guilty, solely the educational corrective measure which is to be applied to the minor and its duration...

*Art. 434.* The progress of criminal proceedings or the judgement passed upon the minor may not be published in the press without the permission of the organ of inquiry, the investigating judge or the president of the council. Where the publication of the progress of proceedings or the judgement is allowed, the name of the minor or the other data from which the identity of the minor could be concluded must not be indicated in the press.

For violation of the provisions of the foregoing paragraph, the person liable under the Press Act shall be punished according to article 285 of the Criminal Code.

...

### PART THREE.—SPECIAL PROCEDURES

#### CHAPTER XXVII.—PROCEDURE FOR THE APPLICATION OF SECURITY MEASURES

*Art. 436.* If the defendant has committed a criminal offence while of unsound mind (article 6, paragraph 1, of the Criminal Code) the public prosecutor shall, provided that he considers the perpetrator

to represent a threat to his surroundings, propose to the court that the perpetrator be committed to a mental home or other institution for custody and treatment.

In this case the accused who finds himself detained or on remand shall not be set free but shall, until the completion of the procedure for the application of the security measure, temporarily be committed to some institution for custody and treatment or to some convenient premises.

...

#### CHAPTER XXVIII.—PROCEDURE FOR REHABILITATION

*Art. 444.* A petition for judicial rehabilitation (article 89 of the Criminal Code<sup>1</sup>) shall always be submitted to the county court on whose territory the convicted person resides...

*Art. 445.* ...Should the council find that all the legal requirements are met, it shall decide in favour of rehabilitation and deletion from the penal records. In the opposite case, it shall decide to reject the petition. The decision shall be transmitted to the convicted person and to the public prosecutor.

Should the court reject the petition because it believes the convicted person by his conduct has not deserved to be rehabilitated, the convicted person may reopen the petition two years from the date when the decision assumed legal force.

...

*Art. 449.* The certificate issued on the basis of penal records may not make reference to the deleted sentence...

#### CHAPTER XXX.—PROCEDURE FOR THE EXTRADITION OF DEFENDANTS AND CONVICTED PERSONS

...

*Art. 464.* ... The federal Public Prosecutor shall not allow the extradition of the alien who enjoys the right of asylum in the Federal People's Republic of Yugoslavia (article 97, paragraph 4, of the Criminal Code<sup>2</sup>) or where a political or military criminal offence is involved...

#### 2. *The House Rules for Prisons for Custody or Confinement*<sup>3</sup>

These rules elaborate in greater detail the provisions of articles 194–198 of the Code of Criminal Procedure, reviewed and quoted above. We shall, therefore, not mention here the provisions of the rules which correspond to the above-mentioned articles of the Code of Criminal Procedure, but only those complementing them and being of interest from the point of view of human rights.

The general provisions of the rules prescribe the

<sup>1</sup> See *Yearbook on Human Rights for 1951*, p. 399.

<sup>2</sup> *Ibid.*, p. 400.

<sup>3</sup> The Serbo-Croat text was published in *Službeni List* No. 14, of 31 March 1954.

accommodation of persons in custody or confinement prison, management of the prisons and the basis of order in them.

The rules provide for detailed measures concerning the health and food of prisoners, especially measures on hygiene, medical assistance, hospital treatment, procurement of medicaments, etc. The prisoner may be also examined by a physician chosen by himself, and may procure medicaments at his own cost and receive them from his family and other persons (articles 14-19). Prisoners are fed at the government's expense, but they are, as a rule, also entitled to feed themselves at their own cost. Minors and pregnant women obtain a special food allowance, and the sick the necessary diet, if possible (articles 24 and 25). Visits are permitted, as a rule, twice a week, and in exceptional cases at other times. A prisoner may also be visited by his counsel. As a rule he may receive by post and otherwise parcels containing articles permitted for his personal use, as well as money for the procurement of food, tobacco and similar articles (articles 32 and 33). In their free time prisoners may read and play social and other games (article 41).

The prison administration is bound to set the prisoner free immediately after receiving a release order (article 47). In the case of the death of the prisoner, the competent organ and the family of the prisoner are immediately notified of it. The cause of death must be ascertained by a commission. The belongings of the dead are delivered to his family (article 50). The prisoner is entitled to complain at any time against the conduct of the prison's director or other persons employed therein; such complaints must be immediately forwarded to the organ conducting proceedings. The prison administration is bound to furnish the prisoner with the materials for writing complaints, grievances and petitions (article 53).

#### D. SOCIAL AND HEALTH INSURANCE

##### 1. *The Workers' and Employees' Health Insurance Act*<sup>1</sup>

This Act represents an important step forward in the development of a system of social insurance and particularly health insurance. It is divided into eight chapters and contains 119 articles.

The first chapter contains the basic provisions of the Act. The following are the most important provisions of articles 1-7:

"*Art. 1.* Through health insurance the social community ensures for the workers and employees and persons having equal status with them, and members of their families, the rights to health protection, monetary compensation and relief according to the provisions of this Act.

"Specific rights ensuing from health insurance are also ensured to other persons specified in this Act.

<sup>1</sup> The Serbo-Croat text was published in *Službeni List* No. 51, of 8 December 1954.

"*Art. 2.* Health insurance comprises: the right to health protection; the right to compensation instead of salary during temporary incapacity for work due to illness and in other cases specified in this Act; the right to compensation instead of salary during the leave due to pregnancy and child-birth and the right to assistance for securing the outfit of the newborn child; and the right to compensation for travelling expenses in connexion with the use of health protection.

"*Art. 3.* The persons specified in this Act are ensured the right to compensation for burial expenses and survivors' benefits.

"*Art. 4.* All persons insured under this Act have under the same conditions equal rights ensuing from health insurance.

"Insured persons cannot be requested to waive the enjoyment of the rights ensured by this law.

"*Art. 5.* Health insurance under this Act is implemented by social insurance administrations organized for the territory of a district (town) or for the territory of more than one district and/or for the territory of a district and a town...

"*Art. 6.* The financial basis of health insurance is provided by the health insurance funds which are managed by social insurance administrations.

"The health insurance funds are secured from the contributions paid by economic and other organizations, institutions and employers for all persons employed by them, as well as by other contributors under separate provisions.

"*Art. 7.* The social insurance administrations cannot deny or restrict the rights ensured by law because of the lack of available financial means.

"Insured persons are entitled to judicial protection for realization of the rights ensured by this Act."

The second chapter of the Act specifies all categories of persons insured under the Act (articles 9-15).

Included here are primarily all workers and employees employed in the territory of the Federal People's Republic of Yugoslavia, irrespective of their sex, age and nationality (including agricultural workers). Included also are Yugoslav citizens employed abroad in the service of Yugoslav institutions or economic organizations, in so far as these rights are not ensured them by international treaties or by the provisions of international organizations they are employed with. Foreign nationals working in Yugoslavia under special contracts enjoy the same rights.

Health insurance is enjoyed also by apprentices; pupils of lower and middle schools, as well as students of higher and high schools; the persons who have temporarily interrupted their employment relationship for the purpose of specialization studies; persons engaged in unpaid service; beneficiaries of personal and family pensions or invalid allowances; and tem-



porarily unemployed persons registered with the employment placing service.

Insured also are members of the families of workers and employees and persons having equal status with them living in the Federal People's Republic of Yugoslavia. Members of family are spouses, legitimate, illegitimate and adopted children up to sixteen years of age, and if attending school up to twenty-five years of age. The parents are also included, as well as grandfather and grandmother, if they are incapable of working and are maintained by the insured person, and also brothers, sisters and grandchildren of the insured person if they are maintained by the insured person.

Foreign nationals employed with international organizations and institutions and foreign diplomatic and consular representations in the territory of the Federal People's Republic of Yugoslavia may enjoy the right to health protection if the institution they are employed with voluntarily applies for the insurance of its whole personnel.

Chapter III elaborates upon the health insurance rights mentioned in article 2 of the Act (articles 16-48).

Health protection includes: medical examination and treatment in health institutions and in the home of the patient; supply of medicaments and other medical supplies; medical and other special care and assistance during and after childbirth; dental care; and treatment and maintenance in convalescent homes, spas, etc. Under special conditions there are also included here technical dentist assistance, braces and other orthopaedic and related medical appliances.

The right to health protection is acquired by the establishment of an employment or analogous relationship and lasts throughout the existence of such relationship, and a month after its cessation. Treatment started during the period of insurance is continued if the insured person has been incapacitated for work because of illness, as long as this incapacity exists.

Compensation instead of salary is due to insured persons if they are temporarily incapacitated for work because of illness; if they are put in health institutions; if they are sent to another place for the purpose of home care; if they are isolated as germ-bearers or because of infectious disease; or if they are ordered to nurse or accompany an ill member of the family.

Compensation instead of salary is determined on the basis of the average salary for the last three months preceding the appearance of the condition serving as the basis for compensation. It represents 50 per cent to 100 per cent of the salary during the period for which the insured person (or a member of his family) is incapable for work.

Insured persons retain the right to health protection while under arrest or in confinement as long as they remain insured, and this applies equally to members of their families. During the service of imprisonment insured persons do not enjoy the right to health

insurance under this Act, but members of their families retain this right if the punishment is not longer than six months.

The insured person is denied the right to compensation if he deliberately renders himself incapable for work or hinders his recovery.

Insured women are entitled to compensation instead of salary during maternity leave, lasting as a rule forty-five days before and forty-five days after childbirth, and longer if necessary. The compensation represents 80 per cent to 100 per cent of the salary. Nursing mothers enjoy reduced work time for the period of six months after childbirth; during that period they are entitled to the compensation proportionate to the time spent at work as compared with their full time. Insured women are entitled to assistance in acquiring the outfit of each new-born child.

Compensation for travelling expenses comprises the expenses of transportation, maintenance and accommodation during the travel and stay in another place; it is due to insured persons and to members of their families if they are sent for special examination and treatment or to a convalescent home, spa or other place. Such expenses are also recognized for the person accompanying the patient, if such accompaniment is indispensable.

Chapter IV contains provisions on compensation and relief in case of death (articles 47 and 48). In the case of the death of the insured person or member of his family, the family is entitled to the payment of burial expenses. Members of the family maintained by the deceased insured person are entitled to a survivor's benefit in the amount of one month's salary. This is equally valid in the case of death of a person receiving a pension or invalid benefit.

Chapter V contains provisions on the participation of the Social Insurance Administration in the implementation of preventive measures against diseases and work casualties (articles 49-54). Social insurance administrations are bound to co-operate actively with the competent government organs in organizing and implementing the measures for health protection of insured persons and members of their families, especially in implementing the measures for the removal of causes of accidents and occupational diseases, as well as of other harmful occurrences concerning work, environment and working conditions. Provisions are also made for compulsory medical examination on accepting an employment for the first time or changing occupations and for frequent health examination of apprentices and young workers.

Chapter VI contains provisions on actual realization of the rights of insured persons (articles 55-58) and concerns various institutions, documents, records, settling of accounts, the right to appeal, and other matters.

Chapter VII prescribes penal and protective measures and payment of damages. Employers are bound



to compensate the Social Insurance Administration for loss suffered because of their neglect to carry out the measures for protection of the health and life of insured persons, their denial to insured persons of the enjoyment of rights provided for by this Act, and other reasons. On the other hand, health institutions are bound to compensate insured persons for damage suffered because of the faulty work of such institutions and their organs. All fines are turned over to the fund for preventive protection.

Chapter VIII (articles 101–119) contains transitional and final provisions. Of importance here is the provision that the rights provided for by this Act are also extended to artists and other self-employed cultural workers, pending the enactment of special provisions. Health insurance under this Act may also cover other self-employed persons (advocates, etc.), as well as home workers, seasonal workers and others.

The coming into force of this Act repeals the provisions of the Workers' and Employers' Social Insurance Act of 1952 in so far as they are contrary to the provisions of this Act, since this Act is broader and more favourable with respect to health insurance of insured persons and their families.

The provisions and measures of this Act on health insurance cover large sections of Yugoslav inhabitants and offer them the maximum health protection possible at the present level of development in Yugoslavia.

## 2. Decree on the implementation of the Workers' and Employees' Health Insurance Act<sup>1</sup>

This decree contains detailed provisions on implementation of this Act. Article 1 extends health insurance to the members of agricultural, artisan and fishing co-operatives.

## 3. Decree amending and supplementing the Decree on the Social Insurance of Clergymen<sup>2</sup>

This decree amends and supplements the earlier decree of 1951.<sup>3</sup> The essential point here is that clergymen of all religious communities and their families may enjoy social insurance under the provisions of the Social Insurance of Workers and Employees Act if the supreme organs or the associations of clergy of their respective religious communities make a contract with the Secretariat for Social Protection of the Federal Executive Council, or with the Social Insurance Administration of the respective People's Republic or both. In this way all clergymen and their families are able to enjoy the benefits of social insurance like other workers and employees.

<sup>1</sup> The Serbo-Croat text was published in *Službeni List* No. 55, of 29 December 1954.

<sup>2</sup> The Serbo-Croat text was published in *Službeni List* No. 5, of 29 January 1954.

<sup>3</sup> See *Yearbook on Human Rights for 1951*, pp. 415–416.

## E. EDUCATION AND TEACHING

### *General Act on Universities.*<sup>4</sup>

This Act represents the first federal law on universities in Yugoslavia. It contains essential provisions on the organization and work of universities. On the basis of this Act the people's republics are to enact their own laws on universities, and each university and faculty its own statute, elaborating in greater detail the provisions concerning the work of these highest teaching and scientific institutions in the country.

In harmony with the general social development in Yugoslavia, this Act introduces social management of universities, thus extricating them from the direct influence of government administration and statism in general. Universities and their faculties are social institutions enjoying a large autonomy in the matters of teaching and scientific work. University training is open to all citizens. Universities and faculties are managed not only by bodies composed of members of the teaching profession (university and faculty administration), but also by bodies including, besides the representatives of the teaching profession, other elected representatives of republican people's assemblies and scientific, expert and other public workers (university and faculty councils). All these bodies include elected representatives of students.

From the point of view of human rights the most significant are the following provisions:

"Art. 2. The University and faculties shall be independent institutions founded upon the principles of social management..."

"Art. 4. Freedom of teaching and scientific work at universities shall be guaranteed.

"Art. 5. Under equal conditions, every citizen shall be entitled to enroll in a faculty and to acquire academic and scientific degrees therein.

...

"Art. 10. The social community shall provide the material resources necessary to the work of the University and faculties..."

"Art. 20. Students are entitled to participate in the work of the management organs of the University and faculties... Students participate in the institutions concerned with health, social and material affairs of students.

...

"Art. 53. The representatives of students shall be entitled to attend the sessions of the faculty administration when questions relating to the performance of instruction and the implementation of the study regulations are considered and to offer their views and proposals."

Article 17 provides that every citizen who has

<sup>4</sup> Promulgated by Presidential Edict No. 22, of 15 June 1954. The Serbo-Croat text appeared in *Službeni List* No. 27, of 30 June 1954.

completed the secondary school for general education shall be entitled to matriculate to a faculty under equal conditions. The same applies to citizens who have completed a secondary vocational school or teachers' training college, with the proviso that they may be admitted to the corresponding faculty only.

It is also worth while mentioning that all university teachers, assistants and expert collaborators are chosen by public competition (article 25).

#### F. PROPERTY

##### *The Sale of Land and Buildings Act*<sup>1</sup>

This Act provides for certain limitations on the sale of agricultural and other lands and buildings, including both social and private property, and the mode of acquisition and alienation of such property by private persons, economic organizations and politico-territorial units. The sale of lands and buildings involving foreigners is also regulated.

Of particular interest for this review is the fact that the sale of lands and buildings representing private property is free as between private persons. Social organizations and associations may acquire and alienate all lands and buildings (article 5).

Physical parts of buildings (apartments and business premises) belonging to private persons may also be sold (article 7).

Under the condition of reciprocity foreign nationals may acquire by inheritance land and buildings in the territory of the Federal People's Republic of Yugoslavia and dispose of them in the same way as Yugoslav nationals, if the acquisition and disposal of such buildings is not otherwise regulated by international treaties. The Federal Executive Council may permit foreign nationals to acquire lands and buildings also by way of other titles (article 8).

## II. INTERNATIONAL INSTRUMENTS

### A. THE FOUR-POWER AGREEMENT

*Memorandum of Understanding between the Governments of Italy, the United Kingdom of Great Britain and Northern Ireland, the United States of America and Yugoslavia regarding the Free Territory of Trieste*<sup>2</sup>

This memorandum regulates various questions connected with the departure of occupation forces from the Free Territory of Trieste and the introduction of Italian and Yugoslav civil administrations in the territory of the former Zone A and Zone B respectively.

Significant from the point of view of human rights

<sup>1</sup> The Serbo-Croat text appears in *Službeni List* No. 26, of 23 June 1954.

<sup>2</sup> The Serbo-Croat and the English texts were published in *Službeni List FNRJ*, *dodatak: Međunarodni ugovori i drugi sporazumi* (Official Gazette FPRY, Annex: International Treaties and other Agreements) No. 6, of 27 October 1954. The Memorandum together with the Special Statute as Annex II and other annexes was signed in London on 5 October 1954. The Federal People's Assembly of Yugoslavia approved them on 25 October 1954.

are articles 6 and 8 of the memorandum, and the special statute attached to the memorandum as annex II. The special statute is entirely devoted to the protection of human rights and fundamental freedoms, especially political and cultural rights, nationality rights, property rights and minority rights. It refers expressly to the Universal Declaration of Human Rights of 10 December 1948, and in this respect too represents an international document of particular interest for human rights.<sup>3</sup>

### B. BILATERAL AGREEMENTS

#### 1. *Agreement on Real Estate in the Yugoslav Frontier Zone of Austrian Land-owners holding Lands on both Sides of the Frontier*<sup>4</sup>

Under this agreement between Yugoslavia and Austria, Austrian Land-owners holding land on both sides of the frontier are restored the right of ownership over their real estates in the Yugoslav frontier zone. The agreement concerns real estate of the peasants cultivating their land alone with the help of their families and possibly using assistant labour, who were Austrian citizens on 6 April 1941, and still are, and who permanently reside in the frontier zone. Real estates of former nazi functionaries, great landlords and legal persons are not restored.

#### 2. *Agreement on the Regulation of Frontier Traffic between the Federal People's Republic of Yugoslavia and the Republic of Austria*<sup>5</sup>

This agreement regulates frontier traffic in the frontier zone for the needs of the frontier population, granting considerable facilities for crossing the frontier to the land-owners holding lands on both sides of the frontier and to the members of their families, as well as to the labourers employed by them, herd-owners, and persons having the right of servitude for the exploitation of woods, etc.

In urgent cases, frontier traffic facilities are also granted to physicians, veterinaries and midwives living in these zones, and in the event of an elementary calamity, to the whole population living in the threatened area of the frontier zone.

#### 3. *Protocol on an Agreement between the Governments of the Federal People's Republic of Yugoslavia and Israel concerning the Property, Rights and Interests of Israeli Citizens in Yugoslavia*<sup>6</sup>

The protocol provides for a lump compensation by Yugoslavia for the property of Israeli nationals

<sup>3</sup> See further the extracts from the Memorandum of Understanding and special statute quoted on pp. 398-400.

<sup>4</sup> *Službeni List FNRJ*, *dodatak: Međunarodni ugovori i drugi sporazumi* (Official Gazette FPRY, Annex: International Treaties and other Agreements) No. 4, of 26 May 1954. The agreement was concluded in Vienna on 19 March 1953 and ratified by Yugoslavia on 3 February 1954.

<sup>5</sup> *Ibid.*

<sup>6</sup> *Službeni List FNRJ*, *dodatak: Međunarodni ugovori i drugi sporazumi* (Official Gazette FPRY, Annex: International Treaties and other Agreements) No. 5, of 15 July 1955. Protocol signed in Belgrade on 9 June 1954 and ratified by Yugoslavia on 15 December 1954.

affected by nationalization, expropriation, dispossession, liquidation, or other restrictive measures of a similar kind in Yugoslavia. Negotiations for fixing the amount of the lump sum and terms of payments are to be resumed after the evaluation of this property and verification of the claims presented.

Compensation will not be given to such persons as were Yugoslav nationals at the time when these measures were carried out, even if they enjoyed double nationality.

#### C. RATIFICATION OF MULTILATERAL INTERNATIONAL CONVENTIONS

1. *Convention on the Political Rights of Women*, opened for signature in New York on 31 March 1953.<sup>1</sup> Ratified by Yugoslavia on 26 April 1954.<sup>2</sup>
2. *Convention concerning Minimum Standards of Social Security*, approved at the 35th Session of the General Conference of the International Labour Organisation on 28 June 1952.<sup>3</sup>

<sup>1</sup> See *Yearbook on Human Rights for 1952*, pp. 375–376, and *Yearbook on Human Rights for 1953*, p. 375.

<sup>2</sup> *Službeni List FNRJ, dodatak: Medjunarodni ugovori i drugi sporazumi* (Official Gazette FPRY, Annex: International Treaties and other Agreements) No. 7, of 3 November 1954.

<sup>3</sup> See *Yearbook on Human Rights for 1952*, pp. 377–389.

The ratification of this convention by Yugoslavia on 27 October 1954<sup>4</sup> pledges her to implement parts I–VI, VIII and X of the Convention, the relevant provisions of parts XI, XII, XIII, and part XIV.

3. *International Sanitary Regulations* (WHO Regulations No. 2), signed in Geneva at the fourth World Health Assembly, 25 May 1951, together with annexes 1–6 and annexes A and B.

Yugoslavia ratified these regulations, which concern health protection, on 20 October 1954.<sup>5</sup>

4. *International Convention on Telecommunications*, signed in Buenos Aires, 22 December 1952, together with annexes 1–6, the Final Protocol and the Supplementary Protocols I–IV.<sup>6</sup>

On 26 June 1954, Yugoslavia ratified this convention, which in part concerns freedom of information and communications.<sup>7</sup>

<sup>4</sup> *Službeni List FNRJ, dodatak: Medjunarodni ugovori i drugi sporazumi* (Official Gazette FPRY, Annex: International Treaties and Other Agreements) No. 1, of 17 March 1954.

<sup>5</sup> *Službeni List FNRJ, dodatak: Medjunarodni ugovori i drugi sporazumi* (Official Gazette FPRY, Annex: International Treaties and other Agreements) No. 6, of 1 August 1955.

<sup>6</sup> *Službeni List FNRJ, dodatak: Medjunarodni ugovori i drugi sporazumi* (Official Gazette FPRY, Annex: International Treaties and other Agreements) No. 2, of 23 March 1955.

<sup>7</sup> Compare *Yearbook on Human Rights for 1952*, p. 406

PART II

**TRUST AND NON-SELF-GOVERNING  
TERRITORIES**

## **A. Trust Territories**

### **AUSTRALIA**

#### **TRUST TERRITORY OF NEW GUINEA**

CRIMINAL CODE AMENDMENT (NEW GUINEA) ORDINANCE 1951

NATIVE ADMINISTRATION (NEW GUINEA) ORDINANCE 1951

#### *SUMMARY*<sup>1</sup>

The effect of these ordinances, which have not been referred to in previous editions of the *Tearbook on Human Rights*, is to abolish corporal punishment for all offences other than certain offences by juveniles, offences of a sexual nature against females, offences of violence, such as garrotting, and prison offences such as mutiny in prison. The ordinances also reduce the extent and severity of corporal punishment, and represent a substantial step in the direction of its complete abolition.

#### **NATIVE LABOUR ORDINANCE, 1950**

#### **NOTE**<sup>1</sup>

The Native Labour Ordinance, 1950, referred to in the *Tearbook on Human Rights for 1950* (p. 357), repealed the ordinance of the same name of 1946, which contained provisions penalizing a native labourer for carelessly or improperly performing work under a contract, misrepresenting himself to be free to make a contract, and like petty offences. In failing to re-enact these provisions the 1950 ordinance gave effect to the policy of abolishing all practices which might be inconsistent with the Penal Sanctions (Indigenous Workers) Convention 1939.

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<sup>1</sup> Summary and Note prepared by Mr. H. F. E. Whitlam, former Crown Solicitor, Canberra, government-appointed correspondent of the *Tearbook on Human Rights*.

# BELGIUM

## TRUST TERRITORY OF RUANDA-URUNDI

### NOTE<sup>1</sup>

#### GENERAL

The following enactments are applicable to Ruanda-Urundi:<sup>2</sup>

The decree of 10 April 1954 concerning the protection of indigenous inhabitants.

The decree of 30 June 1954 amending the decree of 16 March 1922 concerning the contract of employment of indigenous workers, and ordinance No. 22/408, of 12 December 1954, concerning measures to give effect to this decree.

Ordinance No. 21/417, of 12 December 1954, concerning Native trade unions.

The decree of 13 August 1954 on insurance for employed persons against old age and premature death.

The decree of 8 December 1954 reorganizing the system of family allowances for non-indigenous employees.

The following enactment promulgated in the Belgian Congo has been made applicable to Ruanda-Urundi:<sup>2</sup>

<sup>1</sup> Note prepared on the basis of information received through the courtesy of Mr. Edmund Lesoir, Honorary Secretary-General of the *Institut International des sciences administratives*, Brussels, government-appointed correspondent of the *Yearbook on Human Rights*.

<sup>2</sup> See the section: "Belgian Congo", pp. 327-329 below.

Ordinance No. 22/122, of 6 April 1954, providing for the establishment of safety and health committees in undertakings (ordinance No. 22/96, of 19 May 1954, *Bulletin officiel du Ruanda-Urundi*, 31 May 1954).

International Labour Convention No. 89 concerning night work of women employed in industry was extended to Ruanda-Urundi as well as to the Belgian Congo, on 29 March 1954.

#### REGULATIONS CONCERNING FREEDOM OF RESIDENCE

Ordinance No. 21/181, of 16 October 1954 (*Bulletin officiel du Ruanda-Urundi*, 31 October 1954), provides that a register must be kept in each extra-customary centre listing all the persons authorized to live there. Indigenous inhabitants must report any change of address within one week. The representative of the Administering Authority may, after consultation with the Council of the centre and in accordance with the prescribed procedure, orally notify the indigenous inhabitant concerned that he is opposed to his residing in an extra-customary centre, if his residence there is deemed undesirable.

## FRANCE

### TRUST TERRITORY OF THE CAMEROONS UNDER FRENCH ADMINISTRATION

#### NOTE<sup>1</sup>

##### GENERAL

The following legislation, promulgated in 1954, is applicable in the Cameroons under French administration as well as in the French overseas territories:<sup>2</sup>

Act No. 54-522, of 22 May 1954, giving effect to the Act of 20 March 1951 amending articles 639 and 640 of the Code of Criminal Procedure;

Decree No. 54-868, of 2 September 1954, concerning the organization of police records;

Decree No. 54-431, of 12 April 1954, giving effect to the legislative decree of 14 June 1938 and to the Act of 12 March 1953 regarding the married woman's statutory lien on property;

The orders of 16 November 1954, setting forth the ways of giving effect to certain provisions of Act No. 52-1322, of 15 December 1952, which establishes a Labour Code in the territories and associated territories coming within the competence of the Ministry for Overseas France;

Decrees Nos. 54-110 to 54-115, of 28 January 1954, extending the application of certain ILO conventions;

Acts Nos. 54-309 to 54-311 of 22 March 1954 authorizing the ratification of ILO Convention No. 82 concerning social policy in non-metropolitan territories, No. 84 concerning the right of association and the settlement of labour disputes in non-metropolitan territories, and No. 85 concerning labour inspectorates in non-metropolitan territories.

##### TREATMENT OF PRISONERS

Order No. 987, of 1 March 1954 (*Journal officiel du Cameroun*, 17 March 1954), supplements the provisions of the decree of 8 July 1933 governing the penitentiary system in the Cameroons. It provides that prisoners awaiting trial may, in certain circumstances, be permitted to have their meals brought in from outside. It also provides that the arrangements for religious worship in prisons and for visits to

prisoners by ministers of the various religions shall be in the hands of the Chief Regional Officers.

##### REGULATIONS REGARDING FREEDOM OF EXPRESSION

Act No. 54-1190, of 29 November 1954 (*Journal officiel: Lois et décrets*, 1 December 1954), provides that the Juvenile Publications Act,<sup>3</sup> No. 49-956, of 16 July 1949, as amended, shall apply to the Cameroons, and that public administration regulations shall determine the method of application.

##### POLITICAL RIGHTS

Order No. 1056, of 2 March 1954 (*Journal officiel du Cameroun*, 4 March 1954), determines, in connexion with partial elections held in certain regions, the method of application of Act No. 52-130, of 6 February 1952,<sup>4</sup> relating to the establishment of group assemblies and local assemblies. The administrative authorities are required to assist all candidates equally in distributing their circulars and displaying their posters for the elections. Candidates may claim a refund of the paper and printing costs incurred during the election.

##### APPLICATION TO THE CAMEROONS OF THE LABOUR CODE FOR THE OVERSEAS TERRITORIES<sup>5</sup>

Order No. 5270, of 7 October 1954 (*Journal officiel du Cameroun*, 13 October 1954) fixes minimum wages for the different occupations by wage brackets.

Order No. 252, of 21 January 1954 (*ibid.*, 27 January 1954), fixes the hours of work in administrative offices and establishments.

Order No. 981, of 27 February 1954 (*ibid.*, 17 March 1954), contains regulations regarding the employment of women and children and specifies the categories of employment not open to women. Order No. 982, of the same date (*ibid.*), lays down age qualifications

<sup>3</sup> See *Tearbook on Human Rights for 1949*, pp. 70-72, and below, p. 331.

<sup>4</sup> See the extracts from this Act in the *Tearbook on Human Rights for 1952*, pp. 352-353.

<sup>5</sup> Act No. 52-1322, of 15 December 1952; see *Tearbook on Human Rights for 1952*, p. 352. The order followed in this list corresponds to the subject classification adopted in the Act of 15 December 1952.

<sup>1</sup> Note drafted on the basis of information received through the courtesy of Mr. Jacques Mégret, Auditeur au Conseil d'Etat, correspondent for the *Tearbook on Human Rights* appointed by the French Government.

<sup>2</sup> See the section: "Non-Self-Governing Territories: France" below, pp. 330-339.



for the employment of children and defines the types of work and the categories of undertaking in which children may not be employed. Order No. 983, of the same date (*ibid.*), permits certain exceptions in regard to the age at which children may be employed, but forbids any departure from the rule likely to cause a contravention of the current school attendance regulations.

Order No. 3323 of 28 June 1954 (*ibid.*, 7 July 1954), sets forth general hygiene and safety measures to be

applied in undertakings. Order No. 3362, of 30 June 1954 (*ibid.*), determines the ways of giving effect to the legal provisions governing medical or health services in undertakings.

Order No. 1126, of 8 March 1954 (*ibid.*, 24 March 1954), provides for the establishment of labour courts, while orders Nos. 1127 to 1130, of the same date (*ibid.*), contain regulations governing the procedure applicable in those courts.

## TRUST TERRITORY OF TOGOLAND UNDER FRENCH ADMINISTRATION

### NOTE<sup>1</sup>

#### GENERAL

Those texts promulgated in 1954 for the French overseas territories which are applicable to the Cameroons under French administration are likewise applicable to Togoland under French administration.<sup>2</sup>

#### ORGANIZATION AND COMPETENCE OF THE COURTS

Decree No. 54-1330, of 27 December 1954 (*Journal officiel: Lois et décrets*, 2 January 1955), concerning justice under local law in Togoland contains provisions similar to those of decree No. 54-1328, of 27 December 1954, governing the same subject in French West Africa.<sup>3</sup>

#### REGULATIONS CONCERNING FREEDOM OF EXPRESSION

Act No. 54-119, of 29 November 1954 (*Journal officiel: Lois et décrets*, 1 December 1954), provides that Act No. 49-956 of 16 July 1949 (Juvenile Publications Act),<sup>4</sup> as amended, shall be applicable to Togoland and that the conditions for its application shall be determined by public administrative regulations.

<sup>1</sup> Note prepared on the basis of information received through the courtesy of Mr. Jacques Mégret, Auditeur au Conseil d'Etat, government-appointed correspondent of the *Yearbook on Human Rights*.

<sup>2</sup> See the section on the Cameroons under French administration, pp. 319-320 above, and the section entitled "Non-Self-Governing Territories: France", pp. 330-339 below.

<sup>3</sup> See p. 333, below.

<sup>4</sup> See *Yearbook on Human Rights for 1949*, pp. 70-72, and p. 331 below.

#### APPLICATION TO TOGOLAND OF THE LABOUR CODE FOR THE OVERSEAS TERRITORIES<sup>5</sup>

Order No. 275-54/IT LS, of 19 March 1954 (*Journal officiel du Territoire du Togo*, 20 March 1954), lays down the procedure for making labour contracts and for engaging labour for a trial period.

Order No. 276-54/IT LS, of the same date (*ibid.*), governs the contract of apprenticeship.

Order No. 279-54/IT LS, of the same date (*ibid.*), provides for consultation between organizations of workers and all persons concerned in the extension of a collective agreement. Order No. 280-54/IT LS, of the same date (*ibid.*), prescribes rules for the registration, publication and translation of collective agreements and the procedure for becoming a party thereto. Order No. 747-54/IT LS, of 26 July 1954 (*ibid.*, 16 August 1954), lays down the conditions for the employment of domestic labour in the absence of a collective agreement.

Order No. 396-54/IT LS, of 28 April 1954 (*ibid.*, 16 May 1954), prescribes the wage zones and minimum interoccupational wages for the Territory of Togoland.

Order No. 278-54/IT LS, of 19 March 1954 (*ibid.*, 20 March 1954), prescribes the rules governing the provision of weekly rest.

Order No. 321-54/IT LS, of 2 April 1954 (*ibid.*, 16 April 1954), provides that pursuant to article 164 of the Labour Code for the Overseas Territories the election of staff representatives shall be compulsory in the undertakings mentioned in the Act of 15 December 1952 if they employ more than ten workers.

<sup>5</sup> See *Yearbook on Human Rights for 1952*, p. 352. The order followed in compiling this list corresponds to the subject classification adopted by the Act of 15 December 1952.

# ITALY

## TRUST TERRITORY OF SOMALILAND

### NOTE

#### *Individual Criminal Responsibility*

Ordinance No. 14, of 2 August 1954 (*Bollettino Ufficiale* No. 8, of 16 August 1954, Supplement No. 1), suspended for two years the application of the collective penalty of special contribution which the regional courts had been empowered by articles 23 and 24 of the Judicial Regulations for Somaliland to impose upon the group to which the authors of an offence belonged.

#### *Freedom of Assembly*

The text of ordinance No. 1, of 29 February 1954, on public assemblies (*Bollettino Ufficiale* No. 2, of 22 February 1954, Supplement No. 1), appears below.

#### *Freedom of Association*

The text of ordinance No. 2, of 20 February 1954, on the constitution and activities of associations, foundations and institutions (*ibid.*) appears also below.

#### *Women's Work*

Ordinance No. 4, of 27 February 1954 (*ibid.* No. 3, of 10 March 1954, Supplement No. 2), made provisions for the protection of working women.<sup>1</sup>

#### *Social Security*

Ordinance No. 7, of 9 March 1954 (*ibid.* No. 4,

<sup>1</sup> A translation into English and French of ordinance No. 4 of 27 February 1954 appears in the *Legislative Series* of the International Labour Office, 1954—Som.It.1.

of 1 April 1954), extended compulsory accident insurance to cover occupational diseases.<sup>2</sup>

#### *Cultural Rights*

Ordinance No. 18, of 10 September 1954 (*ibid.* No. 10, of 1 October 1954), established the Higher Institute of Legal, Economic and Social Studies, and decree No. 152, of 26 November 1954 (*ibid.* No. 12, supplement No. 2, of 13 December 1954), concerned its organization and functioning.

Ordinance No. 10, of 6 April 1954 (*ibid.* No. 7, of 1 July 1954), related to the general organization of secondary schools. Further provisions were made by decrees Nos. 92 and 93 of 18 June 1954 (*ibid.* No. 10, of 1 October 1954), concerning the organization and curricula of, respectively, the lower middle schools and the upper middle schools. Decree No. 98, of 8 July (*ibid.*) concerned the organization and functioning of the School of Islamic Sciences.

<sup>2</sup> Ordinance No. 27, of 7 December 1951 (*Bollettino Ufficiale* No. 12, of 31 December), had made compulsory the insurance of all workers in industrial enterprises against employment accidents, the Fund for Social Insurance (Cassa per le Assicurazioni Sociali della Somalia), established by ordinance No. 43 of 18 July 1950 (*Bollettino Ufficiale* No. 4, of 22 July), being charged with the responsibility of providing that insurance.

A translation into English and French of ordinance No. 7 of 9 March 1954 appears in the *Legislative Series* of the International Labour Office, 1954—Som.It. 2.

### ORDINANCE No. 1, OF 20 FEBRUARY 1954<sup>1</sup>

*Art. 1.* All inhabitants of the territory shall have the right of peaceful assembly. No authorization shall be required for meetings.

*Art. 2.* The promoters of all meetings to be held in a public place or in a place open to the public shall only inform the competent Resident at least three days in advance and indicate the purpose of the meeting.

Any meeting shall be considered as a meeting open to the public which, although privately announced, cannot be regarded as being of a private character because of its location, the number of persons who will attend it, or its aim or object.

<sup>1</sup> The text of the ordinance appears in *Bollettino Ufficiale* No. 2, of 22 February 1954, Supplement No. 1. Translation by the United Nations Secretariat.

All meetings normally held by associations, even with a political aim, are to be considered private, unless they assume the character of regional or national congresses or assemblies.

For reasons of public order, health, or morals, or if previous notification has not been given to him, the Resident may either prohibit any meeting or himself establish its place and date.

For the same reasons, the Resident may prohibit any gathering.

The Resident shall communicate immediately to the Regional Commissioner the measures he has taken and indicate his reasons therefor.

Where no notice has been taken of the prohibition or of the conditions laid down by the authorities, the promoters of the meetings mentioned above, or

TUNISIA<sup>1</sup>

# DECREE ESTABLISHING THE TUNISIAN ASSEMBLY of 4 March 1954<sup>2</sup>

*Art. 1.* Our Government shall be assisted by a Representative Council which shall be called the Tunisian Assembly.

## TITLE I

### COMPOSITION OF THE TUNISIAN ASSEMBLY

*Art. 2.* The Tunisian Assembly shall be composed of forty-five Tunisian members as follows:

- Three Moslem representatives of the capital;
- Forty Moslem representatives of the interior;
- One representative of the Jews of Tunis;
- One representative of the Jews of the interior.

#### *Section I.—Moslem Representation*

*Art. 3.* Each of our male subjects who has attained the age of twenty-five years and is in possession of his civil and political rights shall be entitled to vote.

*Art. 4.* No person who has been sentenced to imprisonment for more than three months may be enrolled in the register of voters.

*Art. 5.* Members of the armed forces in active status shall not be entitled to vote.

*Art. 6.* Orders made by our Prime Minister shall prescribe the procedure for the preparation of the register of voters and the composition and functioning of the commissions that are to consider complaints arising in connexion with the preparation of the register.

*Art. 7.* Subject to the disabilities arising from sentences pronounced subsequent to the preparation of the register of voters and save for the exceptions hereinafter provided for, any person enrolled in the final register of voters may be a candidate if he has attained the age of thirty years by the date of the election.

*Art. 8.* No magistrate and no official or employee of the State or of a government agency or a commune may stand for election.

<sup>1</sup> Extracts from the Franco-Tunisian General Convention of 3 June 1955, granting Tunisia full internal sovereignty, will appear in *Tearbook on Human Rights for 1955*. A protocol of agreement signed on 20 March 1956 between the French and Tunisian governments recognized the independence of Tunisia.

<sup>2</sup> *Journal officiel Tunisie* of 5 March 1954. Translation by the United Nations Secretariat. Orders made by the Prime Minister, President of the Council, on 18 March and 26 April 1954 (*Journal officiel Tunisie*, 19 March 1954, 23 March 1954 and 27 April 1954) deal with the procedure for the preparation of the register of voters, and with the qualifications of candidates, voting procedure and the settlement of disputes in connexion with elections.

Extracts from a decree of 29 December 1955, convening a National Constituent Assembly for 8 April 1956, will appear in *Tearbook on Human Rights for 1955*.

This provision shall not apply to any person engaged in a liberal profession or in trade or agriculture who, while carrying on such occupation, receives as subsidiary income a subsidy or appropriation from the State or from a government agency or a commune in respect of a specific service rendered.

*Art. 9....*

No person may stand for election in more than one constituency. Votes cast for persons standing for election in more than one constituency shall be void.

*Art. 10.* The persons entitled to vote who are domiciled in each territory administered by a sheikh or have been resident there for not less than two years shall, on the dates fixed by our Prime Minister, meet to select, by a relative majority of the votes, five delegates meeting the qualifications of candidate laid down in articles 7 and 8 hereof.

*Art. 11.* The delegates from all the areas administered by sheikhs comprised within an area administered by a single kaïd shall, on the dates fixed by our Prime Minister, meet in the main town to elect, by absolute majority of the votes cast, one representative or, as the case may be, two representatives to the Tunisian Assembly.

*Art. 12.* If a second ballot is necessary, it shall be held immediately, and the election shall be decided by relative majority.

...

*Art. 14.* A plea in abatement in respect of electoral proceedings may be entered within eight days by:

1. Any person entitled to vote who is enrolled in the register of voters of the constituency;
2. Our Prime Minister.

*Art. 15.* An appeal shall lie in the first instance to a commission as referred to in article 6 hereof. The decision of such a commission may be the subject of a further appeal to an administrative court of ordinary law. The procedure for appeals shall be laid down in orders made by our Prime Minister.

...

#### *Section II.—Jewish Representation*

*Art. 17.* Under the same conditions for voting and being elected as apply to Moslems, the representative of the Jews of Tunis shall be chosen by an election in two stages, the persons entitled to vote in the first stage being divided into groups as provided in article 13.

The representative of the Jews of the interior shall be chosen by a college consisting of delegates from the various areas administered by a kaïd in accordance with

a new group arrangement prescribed by Ministerial order.

*Section III.—Common Provisions*

*Art. 18.* The term of office of members of the Tunisian Assembly shall be nine years. New elections in respect of one-third of the Assembly shall be held every three years. The Tunisian Assembly shall, at the first session following its establishment, divide its members into three groups and draw by lot to determine the order in which elections will be held in respect of each group.

Members whose term of office has expired shall be eligible for re-election.

[Title II of the decree provides that the Tunisian Assembly must be consulted before the adoption of any legislative decree concerning economic matters or concerning financial and budgetary matters. It must consider and discuss the state budget, taxes, levies and loans. It may, under certain conditions, express its wishes, and its members may put questions to the Government, but any discussion of matters pertaining to the ruling family, the general organization of the State or the obligations arising from treaties in force is prohibited.]

## ORDER ESTABLISHING, AND ATTACHING TO THE FRENCH RESIDENCY-GENERAL, A REPRESENTATIVE DELEGATION OF FRENCH NATIONALS IN TUNISIA

of 4 March 1954<sup>1</sup>

*Art. 1.* A council known as the Representative Delegation of French Nationals in Tunisia shall be established and be attached to the Residency-General.

### TITLE I

#### COMPOSITION OF THE REPRESENTATIVE DELEGATION OF FRENCH NATIONALS IN TUNISIA

*Art. 2.* The Representative Delegation of French Nationals in Tunisia shall be composed of twenty-three representatives and nineteen deputy representatives.

*Art. 3.* The members of the Delegation shall be elected by direct universal suffrage by the French inhabitants of Tunisia divided into electoral constituencies according to the districts under civilian or military control.

*Art. 4.* Orders to be issued by the Residency-General shall specify the territorial limits of the

constituencies, the number of members of the Delegation to be elected in each constituency, the procedure for the preparation of the registers of voters, voting qualifications, qualifications of candidates, the method of election, voting procedure and the procedure for dealing with complaints.

*Art. 5.* The term of office of members of the Delegation shall be nine years. New elections in respect of one-third of the Delegation shall be held every three years. The Council shall, at the first session following its establishment, divide its members into three groups and draw by lot to determine the order in which elections will be held in respect of each group.

Members whose term of office has expired shall be eligible for re-election.

[Title II of the decree provides that the Delegation must be consulted by the Resident-General with respect to any bill on economic or financial matters which have no budgetary implications. It may, under certain conditions, express its wishes and discuss motions on these matters. Any discussion of constitutional or political matters is prohibited.]

<sup>1</sup> *Journal officiel tunisien* of 5 March 1954. Translation by the United Nations Secretariat.

## ORDER OF THE RESIDENCY-GENERAL SETTING OUT THE PROCEDURE FOR THE PREPARATION OF THE REGISTER OF VOTERS IN RESPECT OF THE REPRESENTATIVE DELEGATION OF FRENCH NATIONALS IN TUNISIA

of 18 March 1954<sup>1</sup>

### TITLE I

#### PERSONS ENTITLED TO VOTE

*Art. 1.* No person entitled to vote may exercise the right of vote in a district under civilian control or an Indigenous Affairs Office unless he is enrolled in the final register of voters for that district or office.

*Art. 2.* Every French national of either sex who

has attained the age of twenty-one years, is in possession of his civil and political rights and has been domiciled in Tunisia for at least two years on 31 December of the election year shall be entitled to vote.

*Art. 3.* No person may, however, be enrolled in the register of voters if he:

1. Has been convicted of a serious offence;

2. Has been sentenced to imprisonment for a term of any length for theft, fraud, breach of trust, embezzlement of public funds or indecent behaviour

<sup>1</sup> *Journal officiel tunisien* of 19 March 1954. Translation by the United Nations Secretariat.

as provided in articles 330, 331 and 334 of the Penal Code;

3. Has been sentenced to imprisonment for a term of more than three months for any offence, subject to the provisions of article 5 hereof;

4. Has been barred by a court, under laws empowering it so to act, from voting and from standing for election;

5. Is in contempt of court;

6. Is an undischarged bankrupt who has been declared in bankruptcy either by a French court or under a judgement issued abroad but enforceable in France;

7. Is under legal disability.

*Art. 4.* Subject to the provisions of article 5 hereof, a person may not be enrolled in the register of voters for a period of five years if he has been sentenced to imprisonment for a term of more than two months for a less serious offence of any kind or has been given a suspended sentence of imprisonment for a term of more than six months or has been ordered to pay a fine of more than 100,000 francs.

The aforesaid period shall be reckoned, in the case of a prison sentence not suspended, from the end of the term of imprisonment, and, in the case of a suspended sentence or a fine, from the date of the final judgement.

*Art. 5.* Enrolment in the register of voters shall not be precluded by reason of:

1. A sentence for negligence, except where accompanied by evasion;

2. A sentence in respect of an infraction (other than an infraction of the Companies Act of 24 July 1867) which, although designated as a "less serious offence", is proof of bad faith on the part of the offender and is subject only to a fine.

*Art. 6.* The residence requirement referred to in article 2 hereof shall be waived in respect of officials and agents of public bodies and members of the armed forces, irrespective of rank, in the regular service serving beyond the statutory period.

*Art. 7.* Naturalized citizens who have not satisfied the requirements of the French Military Service Act may not be enrolled in the register of voters until two calendar years after the date of naturalization.

## ORDER OF THE RESIDENCY-GENERAL CONCERNING THE ELECTION OF MEMBERS OF THE REPRESENTATIVE DÉLEGATION OF FRENCH NATIONALS IN TUNISIA

of 26 April 1954<sup>1</sup>

...

### TITLE II

#### METHOD OF ELECTION

*Art. 3.* The members of the Representative Delegation of French Nationals in Tunisia shall be elected on a single ballot by an absolute majority of votes; a vote may be cast for several candidates on the same list and for the members of different parties. The number of candidates on a list may be equal to or less than the number of seats to be filled.

If two or more candidates obtain the same number of votes, the oldest candidate in point of age shall be considered elected.

### TITLE III

#### QUALIFICATIONS OF CANDIDATES

*Art. 4.* Subject to the disabilities arising from sentences pronounced subsequent to the preparation of the register of voters and save for the exceptions

hereinafter provided for, any person enrolled in the final register of voters may be a candidate in a constituency if he is domiciled in the constituency or has been resident there for not less than two years as of the date of the election and has attained the age of twenty-five years by that date.

*Art. 5.* No magistrate, no official or employee paid by the French Government, the Tunisian Government, a government agency or a local government body, and no member of the armed forces may stand for election.

This provision shall not apply to any person engaged in a liberal profession or in trade or agriculture who, while carrying on such occupation, receives as subsidiary income a subsidy or appropriation from the French State or the Tunisian State or from a government agency or a local government body in respect of a specific service rendered.

<sup>1</sup> *Journal officiel tunisien* of 27 April 1954. Translation by the United Nations Secretariat.

## LABOUR LEGISLATION

Under a decree of 18 February 1954 (*Journal officiel tunisien* of 19 February 1954), payment of wages, paid holidays, family allowances and compensation in respect of industrial accidents and occupational diseases are guaranteed to workers employed by labour contractors or sub-contractors.

Another decree of the same date (*Journal officiel tunisien* of 19 February 1954) deals with the employment of women and children in agriculture. It provides that children may not be employed in agricultural establishments if they do not have the physical ability to perform the work assigned to them. Children under sixteen years of age are given special protection, and, in particular, the inspector of agricultural labour may order that children under twelve years of age should be discharged if the work assigned to them is beyond their strength. The decree specifies that

women, and children under eighteen years of age, shall have at least twelve consecutive hours of rest at night.

Detailed provisions govern the employment of women before and after childbirth. A woman may not knowingly be employed less than four weeks after confinement. Contraventions of the decree are punishable by fine.

A further decree of the same date (*Journal officiel tunisien* of 19 February 1954) provides that the agreement implied by the receipt for settlement in full signed by a worker upon the termination of his labour contract does not preclude him from subsequently bringing an action in respect of that contract on condition that he denounces the agreement according to a prescribed procedure and specifies the rights which he proposes to claim.

## INDUSTRIAL ACCIDENTS AND OCCUPATIONAL DISEASES

A decree of 21 January 1954 (*Journal officiel tunisien* of 26 January 1954) amends the legislation governing industrial accidents, particularly with respect to the conditions under which allowances may be increased.

A decree of 18 February 1954 (*Journal officiel tunisien*

of 19 February 1954 and 9 March 1954) specifies the occupational diseases against which employers are required to obtain insurance as indicated in the tables annexed to the French decree of 31 December 1956, as amended by decrees of 16 March 1948, 9 February 1949, 31 August 1950, 9 December 1950 and 3 October 1951.

## DUTIES OF THE INDIVIDUAL TOWARDS THE COMMUNITY

The decree of 4 February 1954 (*Journal officiel tunisien* of 9 February 1954) concerning the co-operation of citizens in respect of public safety provides that, without prejudice to heavier penalties prescribed by the Penal Code or special laws, any person who wilfully fails to prevent a criminal act or an assault if he can do so by acting immediately without risk either to himself or to other persons shall be sentenced

to imprisonment for a term of not less than one month nor more than three years and to a fine of not less than 74,000 francs nor more than one million francs, or to either of these penalties. A person who wilfully refrains from giving aid to a person in danger if he can do so either by acting directly or by summoning aid without risk either to himself or to other persons shall be liable to the same penalties.

## NETHERLANDS

### NETHERLANDS NEW GUINEA

#### NOTE<sup>1</sup>

In Netherlands New Guinea the attention of the Government has mainly been directed towards the improvement and extension of social security for the indigenous population, in particular with regard to the indigenous workers.

The Papuan worker, who is either recruited by the employer or who on his own account goes to the more developed urban centres, has, on account of his breaking contact with his own community through stress of necessity, been in need of more protection and has therefore required more attention on the part of the Government. For this reason, in the second half of 1954 a regulation was made concerning the employment of native workers (*Government Gazette*, 1954, Nos. 67, 68, 69, 89, 90 and 91), which regulation, though imperfect, has been adapted to the existing need. Furthermore, a regulation has been

made (*Government Gazette*, 1954, No. 78) aimed at "regulating the effect of the migration to the towns in giving rise to undesirable social conditions both in the towns and in the rural areas... in pursuance of the provision laid down in art. 37 of the Decree on the Administration of New Guinea".

In this connexion the over-population of the urban centres on the one hand and the depletion on the employable male part of the population of the rural areas has to be taken into account.

Finally, particular attention was paid to the housing of the lower-grade European employees and the improvement of the facilities for their entertainment. Thus in 1954 twenty-two small houses were built, and the building of a large number of workers' houses has been started, of which forty-five have meanwhile been completed.

As regards the facilities for entertainment, funds have been made available to lay out new sports grounds and to improve the old ones.

<sup>1</sup> Note received through the courtesy of Dr. A. A. van Rhijn, Secretary of State for Social Affairs, government-appointed correspondent of the *Yearbook on Human Rights*.

## NEW ZEALAND

### COOK ISLANDS (INCLUDING NIUE) AND TOKELAU ISLANDS<sup>1</sup>

#### I. LEGISLATION

The Cook Islands Protection of Children Ordinance, 1954, states:

"Any person who, having the custody, control or charge of a child being a boy under the age of fourteen years or being a girl under the age of sixteen years, wilfully ill-treats, neglects, abandons or exposes such child or causes or procures such child to be ill-treated, neglected or abandoned in a manner likely to cause such child unnecessary suffering or injury to its health is liable to imprisonment for one year or to a fine of £100."

The Cook Islands Amendment Act 1954, No. 30, vests the land comprising the Island of Palmerston in the native inhabitants of that island, and declares the Island of Palmerston to be customary land to be

held by the native inhabitants of that island and their descendants according to their native customs and usages. The action was necessary because a licence granting the occupation of the land to an ancestor of the present inhabitants had expired and the land had reverted to its original status as "Crown land".

#### II. INTERNATIONAL AGREEMENT

An agreement between the Government of New Zealand and the United Nations Children's Fund for the rendering of assistance in the Cook Islands, the Tokelau Islands and the Trust Territory of Western Samoa was signed on behalf of New Zealand, the Cook Islands (including Niue), the Tokelau Islands and the Trust Territory of Western Samoa on 26 August 1954 and came into force on the same date.<sup>2</sup>

<sup>1</sup> Note based on information received through the courtesy of the New Zealand Government. See also p. 218.

<sup>2</sup> *New Zealand Treaty Series 1955, No. 1* (External Affairs publication No. 146).



# UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

## BRITISH GUIANA

### NOTE<sup>1</sup>

A new constitution was introduced in British Guiana in April 1953. The British Guiana (Constitution) Order in Council, 1953,<sup>2</sup> was made on 1 April 1953, and on the same day new letters patent and royal instructions were issued. On 7 April, the Legislative Council was dissolved and on the following day the new constitutional instruments were brought into operation by a proclamation of the Governor. The main features of this Constitution included:

- (1) Universal adult suffrage.
- (2) A bicameral legislature with a life of four years consisting of:
  - (a) A House of Assembly composed of twenty-four elected representatives and three *ex officio* members — the Chief Secretary, the Attorney-General and the Financial Secretary — and presided over by a Speaker appointed by the Governor from outside the legislature and without a casting vote;
  - (b) A State Council composed of nine members appointed by the Governor (one of whom must be elected President of the Council); six of these members would be appointed by the Governor in his discretion, two appointed on the recommendation of the six elected Ministers (from the House of Assembly) and one appointed after consultation with the independent and minority party members of the House of Assembly;
- (3) An Executive Council, consisting of the Governor as President, the three *ex officio* members of the House of Assembly, six Ministers chosen by ballot from among the elected members of the House of Assembly and vested by the Governor (on the basis of individual ministerial responsibility) with the charge of government departments and subjects which fall in their respective portfolios, and a member of the State Council, elected by that council to be Minister without Portfolio. One of the Ministers with Portfolio to be chosen by his colleagues as Leader of the House of Assembly.
- (4) The Governor to retain the usual reserve powers for use at his discretion in the interests of public order, public faith and other essentials of good government, but to be bound customarily to act in

accordance with the advice tendered in the Executive Council.

To qualify for the House of Assembly, a person had to be a British subject of the age of twenty-one years or upwards holding no office of emolument under the Crown and residing in the colony for at least two years immediately preceding the date of his nomination, or domiciled there. He was also required to be able to speak and read (unless incapacitated by blindness) the English language with a degree of proficiency sufficient to enable him to take an active part in the proceedings of the House. To be eligible for registration as voters, persons had to be British subjects residing in the colony for two years, or domiciled there.

Qualifications for membership of the State Council were the same as those required for the House of Assembly, except that the minimum age limit for appointment to the former was fixed at thirty-five years.

The first general election under the British Guiana (Constitution) Order in Council was held on 27 April 1953.

On 4 October 1953, as a result of a constitutional crisis,<sup>3</sup> the British Guiana (Constitution) (Amendment) Order in Council, 1953,<sup>4</sup> and the British Guiana (Emergency) Order in Council, 1953,<sup>5</sup> were made and additional royal instructions issued to the Governor. The Constitution (Amendment) Order in Council revoked certain provisions in the principal order dealing with the Executive Council and in particular section 7 requiring the Governor to consult with the Executive Council in the exercise of his powers under the order.

The emergency Order in Council brought into force in the Colony certain modified provisions of the Defence Regulations, 1939, together with certain other new emergency provisions and empowered the preparation of an emergency order. The Order in Council and the additional instructions came into operation on 8 October 1953. On the following day,

<sup>2</sup> See *British Guiana: Suspension of the Constitution*, Cmd. 8980, H.M. Stationery Office, London.

<sup>4</sup> H.M. Stationery Office, *Statutory Instruments*, 1954, No. 1478.

<sup>5</sup> H.M. Stationery Office, *Statutory Instruments*, 1954, No. 1479.

<sup>1</sup> Note based upon *Colonial Annual Report: British Guiana 1954*, Georgetown, British Guiana, pp. 3-4 and 168-174.

<sup>2</sup> H.M. Stationery Office, *Statutory Instruments*, 1954, No. 586.

the portfolios of the elected Ministers were withdrawn and the decision of the United Kingdom Government that the Constitution of British Guiana must be suspended was announced. In the statement by the Government announcing this decision it was indicated that as soon as the necessary legal steps could be taken the Constitution would be suspended and an interim government set up.

On 22 December 1953, these legal steps were completed and the British Guiana (Constitution) (Temporary Provisions) Order in Council, 1953,<sup>1</sup> was made and new royal instructions issued to the Governor. The Temporary Provisions Order in Council provided for, *inter alia*, the suspension of the above-described

provisions, among others, of the Constitution Order in Council of April 1953, and the appointment by the Governor of an Executive Council and a Legislative Council.

A commission of inquiry was appointed to consider what changes were required in the Constitution of British Guiana, its report being released on 2 November 1954.<sup>2</sup> The United Kingdom Government then decided that the term of the appointment of the members of the Legislative Council constituted under the Temporary Provisions Order in Council should be effective for up to four years from 1 January 1954. At the same time it was announced that everything possible would be done to encourage the eventual return of representative Government.

<sup>1</sup> H.M. Stationery Office, *Statutory Instruments*, 1954, No. 1910.

<sup>2</sup> Cmd. 9274, H.M. Stationery Office, London.

## BRITISH HONDURAS

### THE REPRESENTATION OF THE PEOPLE ORDINANCE, 1953

No. 13 of 1953

(27 July 1953)<sup>1</sup>

...

2. (1) In this ordinance,—

...

“Council” means the Legislative Council of the Colony;

...

3. Every person shall be entitled to be registered as a voter, for any one electoral division, and when registered, to vote at the election of a member of the Council, who is qualified as follows, that is to say—

- (a) Has attained the age of twenty-one years;
- (b) Is under no legal incapacity;
- (c) Is a British subject;
- (d) Is not an undischarged bankrupt;
- (e) Has ordinarily resided in the Colony for twelve months at least previous to the date of registration, or is domiciled in the Colony and is ordinarily resident therein at the date of such registration:

<sup>1</sup> English text in *Ordinances of British Honduras passed in the Year 1953*, Printing Department, British Honduras.

Provided that no person shall be registered as a voter or be entitled to vote for the election of a member of the Council who has been convicted of perjury in any court in Her Majesty's Dominions and sentenced to punishment therefor or been sentenced by any such court to death, or penal servitude, or imprisonment with hard labour or for a term exceeding twelve months, and has not either suffered the punishment to which he was sentenced or such other punishment as by competent authority may have been substituted for the same or received a free pardon from Her Majesty.

Provided further that no person shall be registered as a voter unless he shall with his own hand have subscribed his name to his claim to be registered and written thereon the date of such subscription.

...

[The Schedule to the ordinance contains regulations to provide for the registration of voters and the conduct of elections of elected members of the Legislative Council. These regulations include provisions relating to secrecy of voting and prohibition of political propaganda on polling day.]

## THE BRITISH HONDURAS CONSTITUTION ORDINANCE, 1954

No. 13 of 1954

(23 March 1954)<sup>1</sup>

## PART II

## LEGISLATIVE ASSEMBLY

3. There shall be in and for the Colony a Legislative Assembly constituted as provided in this ordinance.

5. The Legislative Assembly shall consist of a Speaker, three *ex officio* members, three nominated members and nine elected members.

11. The elected members of the Legislative Assembly shall be persons qualified for election in accordance with the provisions of this ordinance and elected in the manner provided by the Representation of the People Ordinance, 1953.<sup>2</sup>

12. Subject to the provisions of section thirteen of this Ordinance, any person who—

(a) Is a British subject of the age of twenty-one years or upwards; and

(b) Has resided in the Colony for a period of at least three years immediately before the date of his nomination for election; and

(c) Is able to speak and, unless incapacitated by blindness or other physical cause, to read the English language with a degree of proficiency sufficient to enable him to take an active part in the proceedings of the Legislative Assembly, and

(d) (i) Is in receipt of a clear income in his own right of not less than three hundred dollars *per annum*; or

(ii) Is the owner in his own right of real property (which for the purpose of this sub-paragraph includes a leasehold interest) situate within the Colony of the value of not less than five hundred dollars over and above all charges and encumbrances in respect thereof, or is in receipt of a clear income in his own right of not less than ninety-six dollars *per annum* derived from real estate,

shall be qualified to be elected as an elected member of the Legislative Assembly, and no other person shall be qualified to be so elected or, having been so elected, shall sit or vote in the Legislative Assembly.

13. No person shall be qualified to be appointed as a nominated member or elected as an elected member of the Legislative Assembly who—

(a) Is, by virtue of his own act, under any acknow-

ledgement of allegiance, obedience or adherence to a foreign Power or State; or

(b) Holds or is acting in any office of emolument under the Crown; or

(c) Being a person possessed of professional qualifications is disqualified (otherwise than at his own request) in any part of Her Majesty's dominions from practising his profession by the order of any competent authority made in respect of him personally; or

(e) In the case of an elected member, is a party to, or a partner in a firm, or a director or manager of a company which is a party to, any contract with the Government of the Colony for or on account of the public service, and has not within one month before the day of election, published in the English language in the *Gazette* and in a newspaper circulating in the electoral division for which he is a candidate a notice setting out the nature of the contract, and his interest or the interest of any such firm or company, therein; or

(f) Is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in any part of Her Majesty's dominions; or

(g) Is a person adjudged to be of unsound mind or detained as a criminal lunatic under any law in force in the Colony; or

(h) Has been sentenced in any part of Her Majesty's dominions to death, or to imprisonment (by whatever name called) for a term exceeding twelve months, and has not either suffered the punishment to which he was sentenced or such other punishment as may by competent authority have been substituted therefor, or received a free pardon; or

(i) In the case of an elected member, is disqualified for election by any law in force in the Colony by reason of his holding, or acting in, any office the functions of which involve—

(i) Any responsibility for, or in connexion with, the conduct of any election; or

(ii) Any responsibility for the compilation or revision of any electoral register; or

(j) Is disqualified for membership of the Legislative Assembly by any law in force in the Colony relating to offences connected with elections.

14. ...

(2) Every nominated or elected member of the Legislative Assembly shall in any case cease to be a member at the next dissolution of the Legislative Assembly after his appointment or election, or

<sup>1</sup> English text in *Ordinances of British Honduras passed in the Year 1954*, Printing Department, British Honduras.

<sup>2</sup> See above, p. 343.

previously thereto if his seat shall become vacant under the provisions of this Ordinance.

(3) The seat of a nominated or elected member of the Legislative Assembly shall become vacant—

(a) upon his death; or

...

(c) If, being a nominated member, he is nominated as a candidate in any election of a member to the Legislative Assembly or, being an elected member, is appointed as a nominated member of the Legislative Assembly; or

(d) If he shall cease to be a British subject, or shall take any oath, or make any declaration or acknowledgement, of allegiance, obedience or adherence to any foreign Power or State; or shall do, concur in or adopt any act done with the intention that he shall become a subject or citizen of any foreign power or State; or

(e) If he shall become a party to any contract with the Government of the Colony for or on account of the public service, or if any firm in which he is a partner, or any company of which he is a director or manager shall become a party to any such contract, or if he shall become a partner in a firm, or a director or manager of a company which is a party to any such contract:

Provided that, if in the circumstances, it shall appear to him or to them to be just so to do the Governor, acting in his discretion, may exempt any nominated member and the Legislative Assembly by resolution may exempt any elected member from vacating his seat under the provisions of this paragraph, if such member shall, before becoming a party to such contract as aforesaid or before, or as soon as practicable after, becoming otherwise interested in such contract (whether as partner in a firm or director or manager of a company) disclose to the Governor or to the Legislative Assembly, as the case may be, the nature of such contract and his interest or the interest of any such firm or company therein; or

(f) If he shall be adjudged or otherwise declared

bankrupt under any law in force in any part of Her Majesty's dominions; or

(g) If he shall be sentenced in any part of Her Majesty's dominions to death or to imprisonment (by whatever name called) for a term exceeding six months; or

(h) If, being an elected member, he shall be appointed to, or to act in, any public office; or

...

(j) If he shall become subject to any of the disqualifications specified in paragraph (c), (g), or (j) of section thirteen of this ordinance; or

(k) If, in the case of an elected member, he shall cease to have the qualifications specified in paragraph (d) of section twelve, or shall become subject to the disqualification specified in paragraph (i) of section thirteen of this ordinance.

(4) A nominated member of the Legislative Assembly may by writing under his hand addressed to the Governor, and an elected member of the Legislative Assembly may by writing under his hand addressed to the Speaker, resign his seat in the Legislative Assembly, and upon receipt of such resignation by the Governor, or by the Speaker or Deputy Speaker, as the case may be, the seat of such member shall become vacant.

...

(6) Any person whose seat in the Legislative Assembly has become vacant may, if qualified, again be appointed or elected as a member of the Legislative Assembly from time to time.

...

35. There shall be a general election at such time, within such period after the commencement of this Ordinance as the Governor may by Proclamation in the *Gazette* appoint, and thereafter within four months after every dissolution of the Legislative Assembly, as the Governor shall by Proclamation in the *Gazette* appoint.<sup>1</sup>

<sup>1</sup> The first general election under the new Constitution was held on 28 April 1954.

## THE BRITISH HONDURAS LETTERS PATENT, 1954<sup>1</sup>

...

### *Short Title and Commencement*

2. These our letters may be cited as the British Honduras Letters Patent, 1954. They shall be proclaimed in such manner and at such places within the Colony as the Governor shall think fit, and shall come into operation on a day to be appointed by the Governor by proclamation published in the *Gazette*.<sup>2</sup>

...

<sup>1</sup> English text in *Statutory Instruments* 1954, Part II, H.M. Stationery Office, London, 1955.

<sup>2</sup> Day appointed, 18 June 1954.

### *Executive Council*

9. There shall be an Executive Council in and for the colony, which shall consist of the Governor as Chairman, three *ex-officio* members, and six elected members.

...

### *Elected Members*

13. (1) The elected members of the Executive Council shall be four elected and two nominated members of the Legislative Assembly and shall be elected to the Executive Council in accordance with the provisions of this article.

(2) The Legislative Assembly shall, not later than its third sitting after the coming into force of an order made by the Governor under the proviso to article 3 of these our letters, and after every dissolution of the Assembly, elect from among the elected members thereof four persons and from among the nominated members thereof two persons to be elected members of the Executive Council.

#### *Tenure of Office*

14. (1) (a) The Legislative Assembly may, by resolution passed in manner provided in sub-paragraph (2) of this paragraph, revoke the election to the Executive Council of any elected member thereof, and upon the passing of such resolution, the seat of such member in the Executive Council shall become vacant.

(b) The passing of such a resolution shall require the casting in favour thereof of the votes of not less than two-thirds of all the members of the Legislative Assembly.

(2) If the Governor, acting in his discretion, shall consider that any Elected Member of the Executive Council has not discharged the obligations imposed upon him by the oath of allegiance or by the oath of any Executive Councillor as prescribed by any law in force in the colony, he may propose to the Executive Council that the election of such member to the Executive Council shall be revoked; and if the executive Council shall so resolve, such member shall cease to be a member of the Executive Council, and thereupon the seat of such member shall become vacant.

(3) A member whose seat becomes vacant under the provisions of paragraph (2) of this article shall not be eligible for re-election to the Executive Council until after that dissolution of the Legislative Assembly next following the date upon which such seat becomes vacant.

(4) The seat of an elected member of the Executive Council shall in any case become vacant—

(a) If he shall cease to be a Member of the Legislative Assembly;

Provided that, if a member of the Executive Council shall cease to be a member of the Legislative Assembly by reason of a dissolution of that Assembly, he shall not on that account vacate his seat in the Executive Council until such time as the Legislative Assembly shall, after such dissolution, elect any persons to be members of the Executive Council in pursuance of paragraph (2) of article 13 of these our letters; or

(b) If he shall be absent from the colony without written permission given by the Governor acting in his discretion.

...

(6) An elected member of the Executive Council may, by writing under his hand addressed to the Governor, resign his seat in the Executive Council,

and upon receipt of such resignation by the Governor the seat of such member shall become vacant.

(7) A person whose seat in the Executive Council has become vacant may, if qualified, again be elected as a member of the Executive Council from time to time.

(8) The Governor may, by instrument under the public seal, declare an elected member of the Executive Council to be, by reason of illness, temporarily incapable of discharging his functions as a member of the Executive Council; and thereupon such member shall not sit in, or take part in the proceedings of the Executive Council until he is declared in manner aforesaid again to be capable of discharging his said functions.

...

#### *Filling of Vacancies*

16. Whenever the seat of an elected member of the Executive Council becomes vacant from any cause other than a dissolution of the Legislative Assembly, the Legislative Assembly shall, as soon as is convenient, elect a person from among the elected or nominated members thereof, as the case may require, to fill the vacancy.

...

#### *Temporary Members*

18. (1) Whenever there shall be a vacancy in the number of persons sitting in the Executive Council by reason of the fact that—

...

(d) An elected member is declared by the Governor under paragraph (8) of article 14 of these our letters to be, by reason of illness, temporarily incapable of discharging his functions as a member; or

(e) A member is absent from the Colony; or

(f) An elected member is temporarily disqualified from sitting in the Executive Council by reason of the provisions of paragraph (5) of article 14 of these our letters

the provision of paragraph (2) of this article shall have effect.

(2) ...

(b) If the vacancy is in the number of persons sitting in the Executive Council as elected members, then, if the Governor, acting in his discretion, shall inform the Legislative Assembly by message that it is desirable that a person should be elected to be a temporary member of the Executive Council for the period of such vacancy, the Legislative Assembly may elect a person from among the elected or nominated members of the Legislative Assembly, as the case may require, to be a temporary member of the Executive Council for such period.

...

*Method of Election and Removal  
of Elected Members*

19. In any election of a member of the Executive Council under paragraph (2) of article 13 or under article 16, or under sub-paragraph (b) of paragraph (2) of article 18, of these our letters, and on any resolution for the removal of an elected member of the Executive

Council under paragraph (1) or paragraph (2) of article 14 of these our letters, the votes of the members of the Legislative Assembly, or of the Executive Council, as the case may be, shall be given by ballot in such manner as not to disclose how any particular member shall have voted.

...

## BRITISH VIRGIN ISLANDS

### THE VIRGIN ISLANDS CONSTITUTION AND ELECTIONS ORDINANCE, 1954 (No. 7 of 1954, assented to on 18 June 1954)

#### SUMMARY<sup>1</sup>

The Virgin Islands Constitution and Elections Ordinance, 1954, reconstitutes the Legislative Council of the Presidency,<sup>2</sup> provides for the registration of persons entitled to vote at elections of members of the Council and regulates the procedure at such elections. The Council is to consist of the Commissioner<sup>2</sup> as President, two nominated official members, two nominated non-official members and six members elected on a constituency basis and in accordance with the provisions of section 42 of the ordinance:

"42. (1) Subject to the provisions of sub-section (2) of this section, every person who—

"(a) Has attained the age of twenty-one years; and

"(b) Is not a lunatic so found under any law in force in the Presidency; and

<sup>1</sup> The text of the ordinance appears in *Leeward Islands, Acts and Ordinances 1954*, Antigua, 1955.

<sup>2</sup> On 1 July 1956 the Presidencies of the Leeward Islands became colonies and the Commissioners became Administrators (Leeward Islands Act, 1956, 4 & 5 Eliz 2, Ch. 23).

"(c) Is a British subject; and

"(d) Has resided in the Presidency for twelve months immediately preceding the date of registration as a voter or is domiciled in the Presidency and is resident therein at the date of such registration; and

"(e) Is not disqualified under the provisions of this ordinance from being registered as a voter,

shall be entitled to be registered as a voter and, when registered, to vote at an election.

"(2) No person shall be registered as a voter or be entitled to vote at an election who has been sentenced by any court in Her Majesty's dominions or in any territory under Her Majesty's protection to death, penal servitude, or imprisonment for a term exceeding twelve months, and has not either suffered the punishment to which he was sentenced or such other punishment as by competent authority may have been substituted for the same or received a free pardon from Her Majesty."

## CYPRUS

### THE PRESS (AMENDMENT) LAW, 1954 (No. 54 of 1954) of 17 November 1954

#### NOTE<sup>1</sup>

On 17 November 1954 the Governor of Cyprus enacted a Press (Amendment) Law repealing section 11 of the Press Law. Section 11 had been on the statute book since 1930 and had empowered the courts to suspend a newspaper in respect of which a conviction for seditious or criminal libel had been made. Its repeal put the press, as far as penalties were concerned, on the same level as a private individual.

<sup>1</sup> The text of the law is contained in *The Cyprus Gazette* No. 3791, of 18 November 1954, Supplement No. 2. Explanatory comment appears in the issue of the *Cyprus Gazette* cited and in Colonial Office, *The Colonial Territories 1954-55* (Cmd. 9489), H.M. Stationery Office, London, June 1955.

Section 11<sup>2</sup> had read as follows:

"11. (1) Whenever any person is convicted of printing or publishing or causing to be printed or published in any newspaper any seditious or other libel, the Court before whom such person is tried may, if it thinks fit, either in lieu of, or in addition to, any other punishment make orders as to all or any of the following matters, that is to say:

"(a) Prohibiting either absolutely or except on conditions to be specified in the order, for such

<sup>2</sup> Available in *Laws of Cyprus 1949*, Vol. 1, chapter 136: The Press Law of 24 December 1947 (No. 28 of 1947).

period not exceeding three years as is mentioned in the order, the future publication of that newspaper;

"(b) Prohibiting either absolutely or except on conditions to be specified in the order, for such period not exceeding three years as is mentioned in the order, the proprietor from publishing, editing or writing for any newspaper whatsoever, or from assisting, whether with money or money's worth or with material or personal service or otherwise, in the publication, editing or production of any newspaper whatsoever;

"(c) That, for the period mentioned in the order, any printing press used in the production of the newspaper be used only on conditions to be specified in the order or that it be delivered to the Commissioner of Police and kept in his custody for such period;

"(d) That a copy of such conviction as aforesaid

shall, at the expense of the person so convicted, be published in such newspaper, if the publication thereof has not been prohibited hereunder, and in such other newspapers as are specified in the order.

"(2) Any person who contravenes or fails to comply with any order made under this section shall be guilty of an offence and shall be liable to imprisonment not exceeding one year or to a fine not exceeding one hundred pounds or to both such imprisonment and fine and every copy of the newspaper printed or published in contravention of any such order shall be forfeited.

"(3) Nothing in this section shall affect the power of the court to punish any person contravening an order made under this section for contempt of court, but so that a person shall not be punished twice for the same offence."

## GAMBIA

### THE COLONY ELECTIONS ORDINANCE, 1954

(No. 1 of 1954, assented to on 31 March 1954)<sup>1</sup>

#### PART I PRELIMINARY

...

2.—(1) In this ordinance, unless the context otherwise requires—

...

"Legislative Council" means the Legislative Council of the Gambia constituted by the Orders in Council.

...

#### PART II QUALIFICATIONS AND DISQUALIFICATIONS OF VOTERS AT ELECTIONS

3.—(1) Subject to the provisions of sub-section (2) of this section, every person, whether male or female, shall be entitled to be registered as a voter and, when registered, to vote at the election of a member or members of the Legislative Council for the electoral district in which he is so registered, who—

(a) Is a British subject or a British protected person; and

(b) Has attained the age of twenty-five years; and

(c) For a period of at least twelve months immediately preceding the date of the last publication of the notice under section 7 of this ordinance, has been

ordinarily resident in the electoral district in which he wishes to be registered and to vote.

(2) Notwithstanding the provisions of sub-section (1) of this section, no person shall be registered as a voter, or having been registered, shall be entitled to vote at the election of a member or members of the Legislative Council who—

(a) Is, by virtue of his own act, under any acknowledgement of allegiance, obedience or adherence to a foreign Power or State; or

(b) Is under sentence of death or is serving, or has within the immediately preceding ten years completed the serving of, a sentence of imprisonment (by whatever name called) of or exceeding six months imposed in any part of Her Majesty's dominions and has not received a free pardon; or

(c) Is a person adjudged to be of unsound mind or detained as a criminal lunatic under any law for the time being in force in the Gambia; or

(d) Is otherwise disqualified under this ordinance or under any other law for the time being in force.

(3) No person, who has been retained or employed for reward by or on behalf of a candidate at an election, for all or any of the purposes of such election, as an agent, clerk, messenger or in any other capacity, shall be entitled to vote at such election.

[The ordinance also regulates the registration of voters and the conduct of elections. There are provisions aimed at safeguarding the secrecy of voting.]

<sup>1</sup> English text in Supplement "C" to the *Gambia Gazette* No. 9, of 1 April 1954.



# THE GAMBIA (CONSTITUTION) ORDER IN COUNCIL, 1954

## of 30 August 1954<sup>1</sup>

### PART I PRELIMINARY

1. (1) In this order, unless the context otherwise requires—

...

“The Gambia” means the Colony and Protectorate of the Gambia;

...

### PART IV LEGISLATIVE COUNCIL

25. There shall be a Legislative Council in and for the Gambia constituted in accordance with the provisions of this order.

26. The Legislative Council shall consist of:

- (a) The Governor, who shall be President;
- (b) A speaker;
- (c) Four *ex officio* members;
- (d) One nominated official member;
- (e) Two nominated unofficial members;
- (f) Fourteen elected members;
- (g) Such temporary members, if any, as may be appointed under section 39 of this order.

...

31. (1) The elected members of the Legislative Council shall be persons qualified for election as such in accordance with the provisions of this order and, subject to the provisions of sub-sections (3) and (4) of this section, shall be elected in accordance with the provisions of sub-section (2) of this section.

(2) (a) Four of the elected members shall be elected, in the manner provided by any law in force in the Colony, to represent the Colony:

Provided that of such members, three shall be elected for the town of Bathurst, and one for the Kombo Saint Mary division.

(b) Four of the elected members shall, in the manner provided by regulations made under section 44 of this order, be elected to represent the Protectorate by the divisional councils from among persons nominated for such election by the district authorities.

(c) Three of the elected members shall, in the manner provided by regulations made under section 44 of this order, be elected to represent the Protectorate by the head chiefs.

(d) Three of the elected members shall, in the manner provided by regulations made under section 44

of this order, be elected by the members referred to in paragraphs (a), (b) and (c) of this sub-section;

Provided that the said three members shall be so elected from among nine candidates, of whom

(i) Six shall be nominated by the Bathurst Town Council and shall not include more than two persons who at the time of such nomination are members of that Council; and

(ii) Three shall be nominated by the Kombo Saint Mary Rural Authority and shall not include more than one person who at the time of such nomination is a member of that authority.

[Sub-sections (3) and (4) deal with the procedure to be adopted to fill vacancies in the Legislative Council when the seat of an elected member is or becomes vacant.]

...

35. Subject to the provisions of section 36 of this order, any person of the age of twenty-five years or upwards who is a British subject or a British protected person shall be qualified to be appointed as a nominated unofficial member or elected as an elected member of the Legislative Council, and no other person shall be qualified to be so appointed or elected or, having been so appointed or elected, shall sit or vote in the Legislative Council.

36. No person shall be qualified to be appointed as a nominated unofficial member or elected as an elected member of the Legislative Council, or, having been so appointed or elected shall sit or vote in the Legislative Council, who at the time of his appointment or election

(a) Is, by virtue of his own act, under any acknowledgement of allegiance, obedience, or adherence to a foreign Power or State; or

(b) (i) in the case of a nominated unofficial member, holds any public office, or

(ii) in the case of an elected member, holds or is acting in, any such office; or

(c) In the case of an elected member, holds the office of Speaker; or

(d) Is an undischarged bankrupt, having been adjudged or otherwise declared a bankrupt under any law in force in any part of Her Majesty's dominions; or

(e) Is under sentence of death or is serving, or has within the immediately preceding ten years completed the serving of, a sentence of imprisonment (by whatever name called) of or exceeding six months imposed in any part of Her Majesty's dominions and has not received a free pardon; or

(f) Being a person possessed of professional qualifications, is disqualified (otherwise than at his own request) in any part of Her Majesty's dominions from practising his profession by the order of any competent authority made in respect of him personally; or

<sup>1</sup> English text in *Statutory Instruments*, 1954, No. 1145, H.M. Stationery Office, London. The Gambia (Constitution) Order in Council, 1954, was made on 30 August 1954, and laid before Parliament on 3 September 1954. It came into operation on 8 September 1954.



(g) Is a party to, or is a partner in a firm, or a director or manager of a company, which is a party to, any subsisting contract (the amount or value of the consideration for which exceeds one hundred pounds, or which forms part of a larger transaction or series of transactions in respect of which the amount or value, or the aggregate amount or value, of the consideration exceeds one hundred pounds) with the Government of the Gambia for or on account of the public service and

...

(ii) in the case of an elected member referred to in paragraph (a) of sub-section (2) of section 31 of this order, has not published, within one month before the day of election, in the English language in the *Gazette* and in some newspaper circulating in the Gambia, a notice setting out the nature of such contract and his interest, or the interest of any such firm or company, therein; or

(iii) in the case of any other elected member has not disclosed the nature of such contract and his interest, or the interest of any such firm or company, therein, to the body electing him; or

(b) Is a person adjudged to be of unsound mind or detained as a criminal lunatic under any law for the time being in force in the Gambia; or

(i) Is disqualified for membership of the Legislative Council under any law for the time being in force in the Gambia relating to offences connected with the election of members; or

(j) In the case of an elected member referred to in paragraph (a) of sub-section (2) of section 31 of this order, is not qualified to be registered as a voter under the provisions of any law for the time being in force in the Gambia; or

(k) in the case of an elected member referred to in paragraph (a) of sub-section (2) of section 31 of this order, is disqualified for election by any law for the time being in force in the colony by reason of his holding, or acting in, any office the functions of which involve any responsibility for, or in connexion with, the conduct of any election, or any responsibility for the compilation or revision of any electoral register.

37. (1) The seat of a nominated unofficial member or an elected member of the Legislative Council shall become vacant

(a) Upon his death; or

(b) If he shall be absent from two consecutive meetings of the Legislative Council, without having obtained from the Governor, before the termination of either of such meetings, permission to be or to remain absent therefrom; or

(c) If, being a nominated unofficial member, he is nominated as a candidate in any election of a member of the Legislative Council or, being an elected member, is appointed as a nominated unofficial member of the Legislative Council; or

(d) If he shall cease to be a British subject, or shall cease to be a British protected person without becoming a British subject or shall take any oath, or make any declaration or acknowledgement of allegiance, obedience or adherence to any foreign Power or State; or shall do, concur in or adopt any act done with the intention that he shall become a subject or citizen of any foreign Power or State; or

(e) If he shall be adjudged or otherwise declared a bankrupt under any law in force in any part of Her Majesty's dominions; or

(f) If in any part of Her Majesty's dominions he shall be sentenced to death or to imprisonment (by whatever name called) for a term of or exceeding six months; or

(g) If he shall become subject to any of the disqualifications specified in paragraph (f), (b) or (i) of section 36 of this order; or

(b) If he shall become a party to any contract (the amount or value of the consideration for which exceeds one hundred pounds or which forms part of a larger transaction or series of transactions in respect of which the amount or value, or the aggregate amount or value, of the consideration exceeds one hundred pounds) with the Government of the Gambia for or on account of the public service, or if any firm in which he is a partner, or any company of which he is a director or manager, shall become a party to any such contract, or if he shall become a partner in a firm, or a director or manager of a company, which is a party to any such contract;

Provided that, if in the circumstances it shall appear to them or him to be just to do so, the Legislative Council may by resolution exempt any elected member and the Governor may exempt any nominated unofficial member from vacating his seat under the provisions of this paragraph, if such Member shall, before becoming a party to such contract as aforesaid or before, or as soon as practicable after, becoming otherwise interested in such contract (whether as partner in a firm or as director or manager of a company) disclose to the Legislative Council or to the Governor, as the case may be, the nature of such contract and his interest, or the interest of any such firm or company, therein; or

(i) If, being an elected member referred to in paragraph (a) of sub-section (2) of section 31 of this order, he shall become subject to any of the disqualifications specified in paragraph (k) of section 36 of this order; or

(j) If he shall by writing under his hand addressed to the Governor resign his seat in the Legislative Council; or

(k) If, being an elected member, he shall be appointed to, or to act in, any public office; or

...

(m) If, being an elected member, he shall be appointed Speaker.

...

(3) A person whose seat in the Legislative Council has become vacant may, if qualified, again be appointed or elected as a member of the Legislative Council from time to time.

...

[Section 39 provides for temporary appointments when there is a vacancy among the persons sitting as *ex officio* or nominated members of the Legislative Council for certain stated reasons.]

...

42. ...

(2) Until it is otherwise provided by law enacted under this order, elections of elected members of the Legislative Council shall be held, qualifications and registration of voters for the election of such members

shall be ascertained and effected, and the other matters referred to in sub-section (1) of this section shall be regulated, by the Colony Elections Ordinance, 1954, and any regulations made under section 43 of this order.<sup>1</sup>

...

[Sections 43 and 44 relate to the power of the Governor to make regulations to give effect to the order and regulations for the election of elected members of the Legislative Council.]

...

<sup>1</sup> Elections in the Colony of the Gambia were the subject of the Colony Elections Ordinance, 1954, extracts from which appear on p. 348 above. In the Protectorate of the Gambia an electoral college system was to operate.

## GOLD COAST

### THE ELECTORAL PROVISIONS ORDINANCE, 1953

(No. 33 of 1953, assented to on 21 November 1953)<sup>1</sup>

...

#### PART II

##### REGISTRATION OF ELECTORS

3. For the purpose of elections to the Assembly the Gold Coast shall be divided into the municipal and rural electoral districts, each returning a single member, which are described in the schedule to this ordinance.<sup>2</sup>

...

6. No person shall be registered as an Assembly elector in any ward who is so registered in any other ward.

...

#### PART III

##### QUALIFICATION AND DISQUALIFICATION OF ELECTORS

...

14. Subject to the provisions of section 15 of this ordinance, every person, whether male or female, shall be entitled to be registered as an Assembly elector in a ward of an electoral district and, when registered, to vote in such ward at the election of a member of the Assembly to represent such electoral district, who—

(a) Is a British subject or a British protected person or is serving in the armed forces of the Crown in the Gold Coast or in the Gold Coast police force;

(b) At the date of his application to have his name entered on the register has attained the age of twenty-one years;

(c) Either owns immovable property within, or has, for a period of not less than six months out of the twelve months immediately preceding the date of his application to register, resided within, the ward in respect of which the application is made; and

(d) Being liable thereto, has, at the date of his application to register paid to the appropriate Council the basic rate in respect of the current year or, if the appropriate Council has not at that date commenced the collection, under section 93 of the Local Government Ordinance, 1951, or section 98 of the Municipal Councils Ordinance, 1953, as the case may be, of the basic rate in respect of the current year, the basic rate in respect of the previous year.<sup>3</sup>

15. (1) No person shall be registered as an Assembly elector or, being registered, shall be entitled to vote at the election of a member of the Assembly who—

(a) Has, in any part of Her Majesty's dominions or in any territory under Her Majesty's protection or under United Kingdom Trusteeship, been sentenced to death or to imprisonment (by whatever name

<sup>1</sup> English text in *Ordinances of the Gold Coast enacted during the Year 1953*, Government Printing Department, Accra, Gold Coast, 1954. The ordinance's full title is: "An ordinance to provide for the registration of electors and the election of members to a legislative body which it is proposed should in due course replace the existing Legislative Assembly of the Gold Coast, and for the combination of registers of electors for such legislative body with registers of electors prepared for local government purposes."

<sup>2</sup> Seven constituencies fall wholly, and seven partly, within the Trust Territory of Togoland under British Administration.

<sup>3</sup> In its section 2, the Electoral Provisions (Amendment) (No. 2) Ordinance 1954 (No. 1 of 1954) substituted the following for paragraph (d) of section 14 of the principal Ordinance: "(d) being or having been, by virtue of section 93 of the Local Government Ordinance, 1951, or section 98 of the Municipal Councils Ordinance, 1953, under a duty to pay the basic rate for the current or the previous year, has, at the date of his application to register, paid to the appropriate Council the basic rate in respect of either the current year or the previous year". This amending ordinance was assented to on 20 February 1954.

called) for a term exceeding twelve months, or has been convicted of any offence involving dishonesty, and has not been granted a free pardon:

Provided that if five years or more have elapsed since the termination of the imprisonment or, in the case of conviction of an offence involving dishonesty in respect of which no sentence of imprisonment has been passed, since the conviction, the person convicted shall not be disqualified from registration as an elector by reason only of such conviction; or

(b) Is a person adjudged to be of unsound mind or detained as a criminal lunatic under any law for the time being in force in the Gold Coast; or

(c) Is disqualified from registering as an elector or voting under any law for the time being in force in the Gold Coast relating to offences connected with elections.

(2) No person shall be entitled to vote at the election of a member of the Assembly if such person, being liable thereto, has not, at the date of such election, paid to the appropriate Council the basic rate in respect of the current year or, if the appropriate Council has not at that date commenced the collection, under section 93 of the Local Government Ordinance, 1951 or section 98 of the Municipal Councils Ordinance, 1953, as the case may be, of the basic rate in respect of the current year, the basic rate in respect of the previous year.<sup>1</sup>

<sup>1</sup> Sub-section (2) of section 15 was amended by the Electoral Provisions (Amendment) (No. 2) Ordinance 1954,

(3) A person shall not be entitled to have his name retained on the register of Assembly electors for any ward if—

(a) He ceases to be a British subject, or ceases to be a British protected person without becoming a British subject or, being neither a British subject nor a British protected person, he ceases to serve in the armed forces of the Crown in the Gold Coast or in the Gold Coast police force; or

(b) For a continuous period of twelve months he ceases to reside or to own immovable property within the ward; or

(c) He becomes disqualified for voting under the provisions of sub-section (1) of this section.

...

## PART V

## REPEAL

17. The Elections (Legislative Assembly) Ordinance, 1950,<sup>2</sup> shall be repealed on such date as may be appointed by the Governor by notice in the *Gazette*.

section 3, and later deleted from the principal ordinance by the Electoral Provisions (Amendment) (No. 3) Ordinance (No. 10 of 1954), which was assented to on 18 March 1954. These two amending ordinances appear in *Ordinances of the Gold Coast enacted during the Year 1954*, Government Printing Department, Accra, Gold Coast, 1954.

<sup>2</sup> Extracts from the Elections (Legislative Assembly) Ordinance, 1950, appear in *Yearbook on Human Rights for 1950*, pp. 394-395.

# THE GOLD COAST (CONSTITUTION) ORDER IN COUNCIL, 1954 of 29 April 1954<sup>1</sup>

## PART I

### PRELIMINARY

1. (1) In this order, unless the context otherwise requires:

...

"The Gold Coast" means the Gold Coast Colony, Ashanti and the Northern Territories of the Gold Coast; and for the purposes of this order references to the Gold Coast shall be construed as including Togoland under United Kingdom Trusteeship;

...

## PART II

### THE EXECUTIVE

4. There shall be a Cabinet of Ministers in and for the Gold Coast of not less than eight persons,

<sup>1</sup> English text in *Statutory Instruments*, 1954, No. 551, H.M. Stationery Office, London. The Gold Coast (Constitution) Order in Council, 1954, was made on 29 April 1954, and laid before Parliament on 30 April 1954. The extracts here presented came into operation on 5 May 1954 with the exception of the extracts from Part II, which came into operation on 18 June 1954.

being members of the Assembly, appointed from time to time in accordance with the provisions of this part of this order.<sup>2</sup>

...

7. (1) The Ministers, one of whom shall be styled "the Prime Minister", shall be appointed and may be dismissed by the Governor, by instrument under the public seal.

(2) In the matter of the appointment and dismissal of Ministers the Governor shall, subject to the provisions of section 16 of this order,<sup>3</sup> act in accordance with the constitutional convention applicable to the exercise of such function in the United Kingdom by Her Majesty:

Provided that no act or omission on the part of the Governor shall be called in question in any court

<sup>2</sup> Subject to the continuing reserve powers of the Governor and his responsibilities for external affairs, the Trust Territory of Togoland under United Kingdom Administration, defence and certain matters concerning the police, the Cabinet as the principal instrument of policy is made responsible for the internal self-government of the country.

<sup>3</sup> Section 16 concerns the assignment of responsibilities to Ministers.

of law or otherwise on the ground that the foregoing provisions of this sub-section have not been complied with.

...

#### PART IV

#### LEGISLATIVE ASSEMBLY

24. There shall be a Legislative Assembly in and for the Gold Coast, which shall consist of a Speaker and of one hundred and four members.

...

28.

...

(2) Subject to the provisions of this order, rural and municipal electoral districts shall be defined by, and the Rural and Municipal Members of the Assembly shall be elected in accordance with, provision made under section 49 of the existing orders or under section 35 of this order.<sup>1</sup>

29. Subject to the provisions of section 30 of this order, any person who—

(a) Is either a British subject or a British protected person; and

(b) Is of the age of twenty-five years or upwards; and

(c) Is able to speak and, unless incapacitated by blindness or other physical cause, to read the English language with a degree of proficiency sufficient to enable him to take an active part in the proceedings of the Assembly;

shall be qualified to be elected as a member of the Assembly, and no other person shall be qualified to be so elected or, having been so elected, shall sit or vote in the Assembly.

30. No person shall be qualified to be elected as a member of the Assembly who—

(a) Is, by virtue of his own act, under any acknowledgement of allegiance, obedience or adherence to a foreign Power or State; or

(b) Holds or is acting in any public office; or

(c) Holds the office of Speaker; or

(d) Is a party to, or a partner in a firm, or a director or manager of a company, which is a party to, any contract with the Government of the Gold Coast for or on account of the public service, and has not, within one month before the day of election, published in the English language in the *Gazette* a notice setting out the nature of such contract, and his interest, or the interest of any such firm or company, therein; or

(e) Is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in any part of Her Majesty's dominions; or

(f) Being a person possessed of professional qualifications, is disqualified (otherwise than at his own request) in any part of Her Majesty's dominions, from practising his profession by order of any competent authority made in respect of him personally:

Provided that if five years or more have elapsed since the disqualification referred to in this paragraph, the person shall not be disqualified for membership of the Assembly by reason only of the provisions of this paragraph; or

(g) Is a person adjudged to be of unsound mind or detained as a criminal lunatic under any law in force in the Gold Coast; or

(h) Has, in any part of Her Majesty's dominions, been sentenced to death or to imprisonment (by whatever name called) for a term exceeding twelve months, or has been convicted of any offence involving dishonesty, and has not been granted a free pardon:

Provided that if five years or more have elapsed since the termination of the imprisonment or, in the case of conviction of an offence involving dishonesty in respect of which no sentence of imprisonment has been passed, since the conviction, the person shall not be disqualified from membership of the Assembly by reason only of such sentence or conviction; or

(i) Is not qualified to be registered as an elector under the provisions of any law for the time being in force in the Gold Coast; or

(j) Is disqualified for election by any law for the time being in force in the Gold Coast by reason of his holding, or acting in, any office the functions of which involve any responsibility for, or in connexion with, the conduct of any election, or any responsibility for the compilation or revision of any electoral register; or

(k) Is disqualified for membership of the Assembly by any law for the time being in force in the Gold Coast relating to offences connected with elections.

31. (1) Every member of the Assembly shall in any case cease to be a member at the next dissolution of the Assembly after he has been elected or previously thereto if his seat shall become vacant under the provisions of this order.

(2) The seat of a member of the Assembly shall become vacant:

(a) Upon his death; or

(b) If he shall be absent from two consecutive meetings of the Assembly, without having obtained from the Speaker, before the termination of either of such meetings, permission to be or to remain absent therefrom; or

(c) If he shall cease to be a British subject, or shall cease to be a British protected person without becoming a British subject; or shall take any oath, or make any declaration or acknowledgement of allegiance,

<sup>1</sup> As is stated in its preamble, the Electoral Provisions Ordinance, 1953, extracts from which appear on pp. 351-2 above, was enacted under section 49 of the existing Orders, which are in this connexion the Gold Coast (Constitution) Order in Council, 1950, and the Gold Coast (Constitution) (Amendment) Order in Council, 1953. As to the former, see *Yearbook on Human Rights for 1950*, pp. 392-394.

obedience or adherence to any foreign Power or State; or shall do, concur in or adopt any act done with the intention that he shall become a subject or citizen of any foreign Power or State; or

(d) If he shall be appointed to, or to act in, any public office; or

(e) If he shall be elected to be Speaker; or

(f) If he shall become a party to any contract with the Government of the Gold Coast for or on account of the public service, or if any firm in which he is a partner, or any company of which he is a director or manager, shall become a party to any such contract, or if he shall become a partner in a firm, or a director or manager of a company, which is a party to any such contract:

Provided that, if in the circumstances it shall appear to them to be just so to do, the Assembly may exempt any member from vacating his seat under the provisions of this paragraph, if such member shall, before becoming a party to such contract as aforesaid or before, or as soon as practicable after, becoming otherwise interested in such contract (whether as partner in a firm or as director or manager of a company), disclose to the Speaker the nature of such contract and his interest or the interest of any such firm or company therein; or

(g) If he shall be adjudged or otherwise declared bankrupt under any law in force in any part of Her Majesty's dominions; or

(h) If he shall, in any part of Her Majesty's dominions, be sentenced by a court to death or to imprisonment (by whatever name called) for a term exceeding twelve months, or be convicted of any offence involving dishonesty; or

(i) If he shall become subject to any of the disqualifications specified in paragraphs (f), (g), (h), (i), (j) or (k) of section 30 of this order.

(3) A member of the Assembly may by writing under his hand addressed to the Speaker, resign his seat in the Assembly, and upon receipt of such resignation by the Speaker or Deputy Speaker the seat of such member shall become vacant.

(4) Any person whose seat in the Assembly has become vacant may, if qualified, again be elected as a member of the Assembly from time to time.

...

35. Subject to the provisions of this order, provision may be made, by or in pursuance of any law enacted under this order, for the election of members of the Assembly including (without prejudice to the generality of the foregoing power) the following matters, that is to say—

- (a) The qualifications and disqualifications of electors;
- (b) The registration of electors;
- (c) The ascertainment of the qualifications of electors and of candidates for election;
- (d) The division of the Gold Coast into electoral districts for the purposes of elections;
- (e) The holding of elections;
- (f) The determination of all questions which may arise as to the right of any person to be or remain a Member of the Assembly; and
- (g) The definition and trial of offences relating to elections and the imposition of penalties therefor, including disqualification for membership of the Assembly, or for registration as an elector, or for voting at elections, of any person concerned in any such offence.

## PART V

### LEGISLATION AND PROCEDURE IN ASSEMBLY

36. (1) Subject to the provisions of this order, it shall be lawful for the Governor, with the advice and consent of the Assembly, to make laws for the peace, order and good government of the Gold Coast:

Provided that should any such law be repugnant to any provision of the Trusteeship Agreement approved by the General Assembly of the United Nations on the thirteenth day of December 1946, in respect of Togoland under United Kingdom Trusteeship, such law shall to the extent of such repugnancy, but not otherwise, be void.

(2) No such law shall make persons of any racial community liable to disabilities to which persons of other such communities are not made liable.

(3) Any laws made in contravention of sub-section (2) of this section shall to the extent of such contravention, but not otherwise, be void.

...

51. There shall be a general election at such time within two months after the date of the commencement of this part of this order and thereafter within two months after every dissolution of the Assembly, as the Governor shall by proclamation published in the *Gazette* appoint.<sup>1</sup>

...

<sup>1</sup> Elections under the new constitution were held in the Northern Territories on 10 and 15 June 1954, and elsewhere in the Gold Coast and in the Trust Territory of Togoland under United Kingdom Administration on 15 June 1954.

THE LOCAL GOVERNMENT (AMENDMENT) ORDINANCE, 1954  
(No. 15 of 1954, assented to on 18 March 1954)<sup>1</sup>

NOTE

Of those provisions of the Local Government Ordinance, 1951, which were reproduced on pages 459-461 of the *Tearbook on Human Rights for 1951*, section 12 was amended in 1954. Paragraph (c) thereof, which contains one of the conditions to be fulfilled before a person may be registered as a voter, and

<sup>1</sup> The text of the ordinance appears in *Ordinances of the Gold Coast enacted during the Year 1954*, Government Printer, Accra, Gold Coast, 1954.

may vote, was replaced by the following new paragraph, with effect from 22 February 1954:

“(c) Being or having been, by virtue of section 93 of this ordinance under a duty to pay the basic rate for the current or previous year, has, at the date of his application to register, paid to the appropriate council the basic rate in respect of either the current year or the previous year;”

JAMAICA

THE JAMAICA (CONSTITUTION) ORDER IN COUNCIL, 1953  
of 30 April 1953<sup>1</sup>

SUMMARY

The Jamaica (Constitution) Order in Council, 1953, provides for a change in the membership of the Executive Council. In place of five elected members, elected by the members of the House of Representatives from among their own number, there are to be eight

<sup>1</sup> English text in *Statutory Instruments*, 1953, No. 747, H.M. Stationery Office, London, 1954. The order was made on 30 April 1953 and came into operation on 5 May 1953. “The main purpose of the Order in Council was to provide that the Executive Council should in future have a clear majority of Ministers drawn from the all-elected House of Representatives, charged with direct responsibility for groups of departments.” (Colonial Reports, *Jamaica* 1953, H.M. Stationery Office, London, 1956, p. 5.)

Ministers who are to be selected from amongst the members of the House of Representatives. Of these one is to be the Chief Minister, who is to be appointed by the Governor after approval by the House of Representatives. The remaining seven Ministers are to be appointed by the Governor on the recommendation of the Chief Minister.

The order also makes provision for charging members of the Executive Council with responsibility for departments or subjects.

Provision is also made enabling the Governor to exercise his reserved legislative power without the consent of the Executive Council.

FEDERATION OF MALAYA

THE FEDERATION OF MALAYA AGREEMENT (AMENDMENT)  
ORDINANCE, 1954 (No. 27 of 1954),  
of 14 September 1954<sup>1</sup>

AN ORDINANCE TO AMEND THE FEDERATION OF MALAYA AGREEMENT, 1948, SO AS TO PROVIDE FOR A PARTLY ELECTED LEGISLATIVE COUNCIL AND FOR OTHER PURPOSES CONNECTED THEREWITH

...

5. There shall be substituted for clauses 36 to 41 inclusive of the Agreement the following clauses numbered 36, 36A, 37, 38, 39, 40, 40A and 41:

36. (1) There shall be established a Legislative Council in and for the Federation, constituted in accordance with the provisions of this agreement.

<sup>1</sup> Published in supplement to the *Federation of Malaya Government Gazette*, 15 September 1954, No. 20, Vol. VII, notification federal No. 2347.

(2) The Legislative Council shall consist of the Speaker, three *ex officio* members, eleven state and settlement members, thirty-two appointed members and fifty-two elected members.

...

40A. (1) The elected members shall be citizens of the Federation of Malaya of the age of twenty-one years or upwards at the date of their nomination as candidates who are at such date ordinarily resident in the Federation and have been so resident for a

period of twelve months immediately prior thereto and who are able to speak and (unless incapacitated by blindness or other physical cause) to read and write the English or Malay language with a degree of proficiency sufficient to enable them to take an active part in the proceedings of the Council.

(2) Elected members shall be elected in accordance with the provisions of law from time to time in force in the Federation.

41. No person shall be qualified to be appointed as an appointed member or to be elected as an elected member of the Legislative Council, or, having been appointed or elected, shall sit or vote therein, who at the time of his appointment or election—

(a) Is, by virtue of his own act, under any acknowledgement of allegiance, obedience or adherence to a Power or State outside the Commonwealth; or

(b) Is a person found or declared to be of unsound mind or is detained as a criminal lunatic under any law from time to time in force in the Federation or any part thereof; or

(c) Has in any part of the Commonwealth been sentenced to death or to imprisonment (by whatever name called) for a term exceeding six months and has not either suffered the punishment to which he was sentenced or such other punishment as may by competent authority have been substituted therefor or received a free pardon; or

(d) Within the immediately preceding five years has in the Federation or the colony been either convicted of or completed a term of imprisonment imposed in respect of a conviction for—

- (i) Any offence punishable with death; or
- (ii) Any offence punishable with imprisonment for life under any regulation made under the Emergency Regulations Ordinance, 1948, or the corresponding provisions of any law from time to time in force in the colony; or
- (iii) Any offence mentioned in chapter VI or any offence punishable with imprisonment for life mentioned in chapter VII or chapter XI (other than section 222) of the Penal Code of the Federated Malay States, as extended to have effect throughout the Federation by the Penal Code (Amendment and Extended Application) Ordinance, 1948, or the corresponding provisions of the Penal Code from time to time in force in the colony; or
- (iv) Any offence punishable under clause 133 E of this agreement or the corresponding provisions of the Nationality Enactment from time to time in force in any State; or
- (v) any corrupt or illegal practice under any written law relating to elections,

and has not received a free pardon.

For the purposes of this paragraph any reference to conviction for an offence shall be deemed to include

a reference to conviction for the abetment of or an attempt to commit such offence; or

(e) Has within the immediately preceding five years been reported by an election judge under the provisions of any written law relating to elections to have been guilty of a corrupt or illegal practice and has not by such report been relieved of the consequences thereof; or

(f) Is an undischarged bankrupt, having been adjudged or declared bankrupt under any law in force in any part of the Commonwealth; or

(g) Holds the office of Speaker of the Legislative Council; or

(h) In the case of an elected member, is holding or discharging the functions of any office of emolument under any Government in the Federation or under the Crown:

Provided that nothing in this paragraph shall be construed as referring to the office of Minister; or

(i) In the case of an elected member is disqualified for election by virtue of any law for the time being in force in the Federation by reason of his holding or acting in any office the functions of which involve any responsibility for or any connexion with the conduct of any election or any responsibility for the compilation or revision of any register of electors.

6. There shall be inserted in the Agreement immediately after clause 41 thereof the following clauses numbered 41 A, 41 B and 41 C:

...

41 B. (1) Subject to the provisions of clause 41 C of this agreement, any person who on the qualifying date—

- (a) Is a citizen of the Federation of Malaya; and
- (b) Is of the age of twenty-one years or upwards; and

(c) Has for a period of six months immediately preceding such date been resident in the Federation, shall be entitled to be registered as an elector in the constituency in which he is ordinarily resident.

(2) For the purposes of this clause the qualifying date shall be determined in accordance with the provisions of law from time to time in force in the Federation.

41 C. No person shall be entitled to be registered as an elector in any constituency or having been so registered, to remain so registered who is—

(a) Subject to any of the disqualifications specified in paragraphs (a), (b), (c), (d) and (e) of clause 41 of this agreement; or

(b) Prohibited from being so registered under the provisions of any law for the time being in force in the Federation.

7. There shall be substituted for clauses 42 to 47 inclusive of the Agreement the following clauses numbered 42, 43, 43 A, 44, 45 A, 46 and 47:



42. (1) Every member of the Legislative Council shall in any case cease to be a member upon a dissolution of the Council or at any time if his seat shall become vacant under the provisions of this Agreement.

(2) The seat of an appointed or elected member of the Legislative Council shall become vacant—

- (a) Upon his death; or
- (b) If he shall, without the leave of the High Commissioner in the case of an appointed member or of the Speaker in the case of an elected member, be absent from four consecutive meetings of the Council; or
- (c) If—
  - (i) He shall cease to be a citizen of the Federation of Malaya; or
  - (ii) Being appointed under the proviso to sub-clause (1) of clause 40 of this agreement, he shall cease to be a British subject; or
  - (iii) Being a citizen of the Federation of Malaya he shall do any voluntary act which shall be declared by the High Commissioner to be incompatible with his loyalty to the Federation; or
  - (iv) Being a British subject or a citizen of the Federation of Malaya he shall take any oath or make any declaration of allegiance, obedience or adherence to any Power or State outside the Commonwealth, or shall do, concur in or adopt any act done with the intention that he shall become a subject or citizen of any such Power or State; or
- (d) If being an appointed member he shall be nominated as a candidate in any election of an elected member, or being an elected member he shall be appointed as an appointed member, and shall have consented to such nomination or appointment; or
- (e) If he shall be found or declared to be of unsound mind or shall be detained as a criminal lunatic under any law in force in the Federation or any part thereof; or
- (f) If he shall be sentenced in any part of the Commonwealth to death or imprisonment (by whatever name called) for a term exceeding six months or convicted in the Federation or the Colony of any offence or practice referred to in paragraph (d) of clause 41 of this agreement; or
- (g) If he shall be reported by an election judge under any written law relating to elections to have been guilty of any corrupt or illegal practice and shall not by such report have been relieved of the consequences thereof; or
- (h) If he shall be declared bankrupt under any law in force in any part of the Commonwealth; or
- (i) If he shall become a party to any contract with the Federal Government for or on account of the public service, or if any firm in which he is a partner or any company of which he is a director or manager

shall become a party to any such contract, or if he shall become a partner in a firm or a director or manager of any company which is a party to any subsisting contract as aforesaid, or if he shall become otherwise to his knowledge interested in any such contract:

Provided that—

- (a) A person shall not be deemed to be interested in any such contract by reason only of his being a shareholder in a company which is a party to such contract unless he has a controlling interest in such company; and
- (b) Nothing in this paragraph shall be construed as referring to—
  - (i) any contract to subscribe to or any subscription to a loan to be issued to the public on advertised terms; or
  - (ii) Any contract the consideration for which is less than one thousand dollars:

Provided further that the High Commissioner may, if in the circumstances it shall appear to him to be just so to do, exempt any member from vacating his seat under the provisions of this paragraph, if such member shall, before becoming a party to such contract or before, or as soon as practicable after, becoming otherwise interested in such contract (whether as partner in a firm, or director, manager, or shareholder of a company or otherwise) disclose to the High Commissioner the nature of such contract and his interest or the interest of any such firm or company therein; or

(j) If he shall be appointed Speaker of the Legislative Council; or

(k) If being an elected member he shall be appointed to any office of emolument under any Government in the Federation or under the Crown:

Provided that nothing in this paragraph shall be construed as referring to the office of Minister; or

(l) If being an elected member, he shall become disqualified for election by virtue of any law for the time being in force in the Federation by reason of his holding or acting in any office the functions of which involve any responsibility for or any connexion with the conduct of any election or any responsibility for the compilation or revision of any register of electors; or

(m) If he shall by writing under his hand, addressed in the case of an appointed member to the High Commissioner and in the case of an elected member to the Speaker, resign his seat in the Council.

...

(4) Any person vacating a seat as a member of the Legislative Council may, if qualified, be subsequently appointed or elected as a member from time to time.

...



## MAURITIUS

## THE TRADE UNION ORDINANCE, 1954

Ordinance No. 36 of 1954

(Assented to on 14 December 1954)<sup>1</sup>

...

## PRELIMINARY

2. (1) In this ordinance, unless the context otherwise requires—

...

“Trade association” means any combination the principal objects of which are under its constitution the regulation of the relations between workmen and employers or between workmen and workmen or between employers and employers, for imposing restrictive conditions on the conduct of any trade or business, whether such combination would or would not, if this Ordinance had not been enacted, have been deemed to have been an unlawful combination by reason of some one or more of its purposes being in restraint of trade;

...

“Trade union” means a trade association whether of employers or of workmen registered by the Registrar;

...

## PART II

4. (1) A trade association shall apply for registration within three months of the date of the formation of the said trade association, or, where the trade association was formed before the commencement of this ordinance, within three months of the date of such commencement.

...

(4) Where no application has been made on behalf of a trade association for registration in compliance with this section, or where such an application duly made has been refused, and in case of appeal, no order has been made against such refusal the trade association shall forthwith be dissolved.

(5) Where a trade association which, under the provisions of the next preceding sub-section, should have been dissolved, is not so dissolved, every officer thereof shall be guilty of an offence and, on conviction, shall be liable to a fine not exceeding ten rupees for every day the trade association remains undissolved.

...

6. (1) If the Registrar is satisfied that—

(a) The purposes of the trade association are unlawful; or

(b) The application is not in conformity with the provisions of this ordinance; or

<sup>1</sup> The text of the Ordinance appears in *Ordinances passed by the Legislative Council of Mauritius during the year 1954*, Government Printer, Port Louis, Mauritius, 1955.

(c) The principal objects of the trade association do not include the regulation of the relation between workmen and employers or workmen and workmen or employers and employers; he may refuse registration.

(2) When the Registrar refuses to register a trade association he shall forthwith inform the applicant in writing of the grounds of his refusal.

(3) (a) Any person aggrieved by any refusal of the Registrar to register a trade association may, within sixty days from the date of notification of such refusal, appeal to the Supreme Court against the decision of the Registrar not to register the applicant trade association and on such appeal, the Supreme Court may make any order as it thinks proper, including any directions as to the costs of the appeal. Any such order of the Supreme Court shall be final.

(b) The Supreme Court may make rules governing such appeals providing for the method of giving evidence, prescribing the time within which such appeal shall be brought, the fees to be paid, the procedure to be followed and the manner of notifying the Registrar of the appeal.

7. (1) It shall be lawful for the Registrar to cancel the registration of any trade union—

(a) At the request of the trade union concerned to be evidenced in such manner as the Registrar shall from time to time direct;

(b) On the trade union concerned failing, within two months after being so called upon by the Registrar, to show cause why its registration should not be cancelled on any of the following grounds, that is to say—

(i) That its certificate of registration has been obtained by fraud or mistake or that the registration of such trade union has become void under section 5 of this ordinance;

(ii) That it has wilfully, and after notice from the Registrar, violated any of the provisions of this ordinance;

(iii) That it has ceased to exist.

(2) An appeal from the decision of the Registrar under this section shall lie to the Supreme Court subject to the same conditions as are provided for an appeal against the refusal of the Registrar to register a trade association, and the Supreme Court may make rules providing for the same matters for which rules may be made in respect of such appeal. The decision of the Supreme Court shall be final.

...

13. (1) Qualifications for membership of a trade union shall include, *inter alia*, normal engagement in the trade, business or industry which the trade union represents.

...

22. Notwithstanding anything to the contrary in any law for the time being in force, a minor who has attained the age of fifteen years may be a

member of a trade union, unless provision be made in the rules thereof to the contrary, and may, subject to the rules of the trade union concerned, enjoy all the rights of a member and execute all instruments and give all acquittances necessary to be executed or given under the rules, but shall not be an officer.

...

## FEDERATION OF NIGERIA

### THE NIGERIA (CONSTITUTION) ORDER IN COUNCIL, 1954 of 30 August 1954<sup>1</sup>

*Introductory Note.* This order made provision for a constitution for Nigeria under which Nigeria was divided into three Regions, the Southern Cameroons and the Federal Territory of Lagos, the capital, which were together to form the Federation of Nigeria. It established a Federal Legislature with power to make laws for the Federation in respect of certain matters, and to make laws for Lagos, and also established a Legislature for each of the Regions and for the Southern Cameroons, with power to make laws in respect of certain matters.

#### CHAPTER I INTRODUCTORY

...

3. (1) The Northern Region of Nigeria, the Western Region of Nigeria, the Eastern Region of Nigeria, the Southern Cameroons<sup>2</sup> and the Federal Territory of Lagos shall form a federation, which shall be styled the Federation of Nigeria.

...

#### CHAPTER II THE LEGISLATIVE HOUSES

5. (1) There shall be, for the Federation, a legislative house, which shall be styled the House of Representatives.

(2) There shall be, for the Northern Region, two legislative houses, which shall be styled, respectively, the Northern House of Chiefs and the Northern House of Assembly.

(3) There shall be, for the Western Region, two legislative houses, which shall be styled, respectively, the Western House of Chiefs and the Western House of Assembly.

(4) There shall be, for the Eastern Region, a legislative house, which shall be styled the Eastern House of Assembly.

(5) There shall be, for the Southern Cameroons, a legislative house, which shall be styled the House of Assembly of the Southern Cameroons.

#### *The House of Representatives*

6. The members of the House of Representatives shall be—

- (a) A Speaker appointed in accordance with subsection (1) of section 7 of this order;
- (b) Three *ex officio* members—namely, the Chief Secretary of the Federation, the Attorney-General of the Federation and the Financial Secretary of the Federation;
- (c) One hundred and eighty-four representative members elected in accordance with regulations made under section 8 of this order, of whom—
  - (i) Ninety-two shall be elected in the Northern Region;
  - (ii) Forty-two shall be elected in the Western Region;
  - (iii) Forty-two shall be elected in the Eastern Region;
  - (iv) Six shall be elected in the Southern Cameroons; and
  - (v) Two shall be elected in Lagos;
- (d) Such special members as may be appointed in accordance with section 11 of this order; and
- (e) Such temporary members as may be appointed in accordance with section 12 of this order.

...

8. (1) Subject to the provisions of this order, the Governor-General may by regulation make provision for the election of persons as representative members of the House of Representatives, including (without

<sup>1</sup> English text in H.M. Stationery Office, *Statutory Instruments*, 1954, No. 1146. The order was made on 30 August 1954, laid before Parliament on 3 September 1954 and came into operation on 1 October 1954. Among other previous enactments, it revokes the Nigeria (Constitution) Order in Council, 1951, extracts from which appeared in *Tearbook on Human Rights for 1951*, pp. 461–463.

See further above, p. 323.

<sup>2</sup> The Northern Cameroons forms part of the Northern Region of Nigeria and is represented by four elected members of the House of Representatives of the Federation.

prejudice to the generality of the foregoing power) the following matters:

(a) The qualifications and disqualifications of electors;  
...

9. (1) Subject to the provisions of section 10 of this order, a person shall be qualified to be elected as a Representative Member of the House of Representatives if —

(a) He is a British subject or a British-protected person of the age of twenty-one years or more and, in the case of a person who seeks election in the Northern Region, is a male person; and

(b) (i) He was born in the region in which he seeks election or his father was born in that region; or

(ii) He has resided in that region for a continuous period immediately before the date of election of at least three years in the case of a person who seeks election in the Northern Region, or of at least one year in the case of a person who seeks election in any other region, and no other person shall be qualified to be so elected, *or, having been so elected, shall sit or vote in that house.*<sup>1</sup>

(2) In this section references to a region shall, except where express reference is made to the Northern Region, include references to the Southern Cameroons and to Lagos.

10. (1) No person shall be qualified to be elected as a representative member of the House of Representatives who—

(a) Is, by virtue of his own act, under any acknowledgement of allegiance, obedience or adherence to any foreign Power or State; or

(b) Is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in any part of Her Majesty's dominions; or

(c) Has been sentenced by a court in any part of Her Majesty's dominions to death, or to imprisonment (by whatever name called) for a term exceeding six months, and has not either suffered the punishment to which he was sentenced, or such other punishment as may by competent authority have been substituted therefor, or received a free pardon; or

(d) Holds, or is acting in, any public office; or

(e) Is, under any law in force in any part of Nigeria, adjudged to be a lunatic or otherwise declared to be of unsound mind; or

(f) Is a member of the Northern House of Chiefs by virtue of being a first-class chief; or

(g) Is a member of the Western House of Chiefs by virtue of being the only head chief in a division of the Western Region; or

(h) Is, by any regulations made under section 8 of this order, disqualified for election to that house.

(2) (a) No person shall be qualified to be elected

<sup>1</sup> Words italicized were deleted by the Nigeria (Constitution) (Amendment) Order in Council, 1955.

as a representative member of the House of Representatives if he has, within a period of five years immediately before the date of election, been sentenced by a court in Nigeria to death, or to imprisonment (by whatever name called) for a term exceeding six months, upon conviction of any offence mentioned in the third schedule to this order, and has not received a free pardon.

(b) No person shall be qualified to be elected in the Northern Region as a representative member of the House of Representatives if he has, within a period of five years immediately before the date of election, been sentenced by a court in Nigeria to death, or to imprisonment (by whatever name called) for a term exceeding six months, upon conviction of any offence that is declared, under paragraph (b) of sub-section (2) of section 39 of this order, to be an offence that contains all the ingredients of any offence mentioned in the third schedule to this order, and has not received a free pardon.

11. (1) The Governor-General, acting in his discretion, may, by instrument under the public seal, appoint persons to be special members of the House of Representatives to represent interests or communities that, in his opinion, are not otherwise adequately represented in the House;

Provided that the number of such members shall not at any time exceed six.

...

12. (1) If a special member of the House of Representatives is incapable of taking part in the proceedings of the House by reason of a declaration made under section 13 of this order, the Governor-General, acting in his discretion, may by instrument under the public seal, appoint a person to be a temporary member of the House.

...

14. The seat in the House of Representatives of any representative member shall become vacant—

(a) Upon a dissolution of the House; or

(b) If he resigns his seat in the House by writing under his hand addressed to the Speaker of the House; or

(c) If he is absent from two consecutive meetings of the House and the Speaker of the House does not, by writing under his hand, excuse his absence within one month after the end of the second meeting; or

(d) If he becomes a member of a regional legislative house or the House of Assembly of the Southern Cameroons; or

(e) If he ceases to be a British subject, or ceases to be a British protected person without becoming a British subject; or

(f) If any circumstances arise that, if he were not a representative member of the House, would cause him to be disqualified for election as such under paragraph (a), (b), (c), (d), (e) or (h) of sub-section (1) of section 10 of this order.

[In the Eastern Region the members of the House of Assembly are all to be elected, with the exception of the Speaker. The majority of members of the Houses of Assembly of the Northern and Western Regions and the Southern Cameroons are to be elected.]

*Elected Members of the Houses of Assembly*

37. (1) Subject to the provisions of this order, the Governor may by regulation make provision for the election of persons as elected members of the house of assembly of a region, including (without prejudice to the generality of the foregoing power) the following matters:

(a) The qualifications and disqualifications of electors;

38. (1) Subject to the provisions of section 39 of this order, a person shall be qualified to be elected as an elected member of the house of assembly of a region if—

(a) He is a British subject or a British-protected person of the age of twenty-one years or more and, in the case of the Northern House of Assembly, is a male person; and

(b) (i) He was born in that region or his father was born in that region; or

(ii) He has resided in that region for a continuous period immediately before the date of election of at least three years in the case of the Northern Region, or of at least one year in the case of any other region; and no other person shall be qualified to be so elected, *or, having been so elected, shall sit or vote in any such house.*<sup>1</sup>

(2) The foregoing provisions of this section shall apply in relation to the Southern Cameroons as they apply in relation to a region other than the Northern Region, and for that purpose references therein to such region, and to the house of assembly thereof, shall be construed as if they were references to the Southern Cameroons, and to the House of Assembly of the Southern Cameroons.

39. (1) No person shall be qualified to be elected as an elected member of the house of assembly of a region or of the Southern Cameroons who—

(a) Is, by virtue of his own act, under any acknowledgement of allegiance, obedience or adherence to any foreign Power or State; or

(b) Is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in any part of Her Majesty's dominions; or

(c) Has been sentenced by a court in any part of Her Majesty's dominions to death, or to imprisonment (by whatever name called) for a term exceeding six months, and has not either suffered the punishment to which he was sentenced, or such other punishment as may by competent authority have been substituted therefor, or received a free pardon; or

<sup>1</sup> Words italicized were deleted by the Nigeria (Constitution) (Amendment) Order in Council, 1955.

(d) Holds, or is acting in, any public office; or

(e) Is, under any law in force in any part of Nigeria, adjudged to be a lunatic or otherwise declared to be of unsound mind; or .

(f) Is a member of any other house of assembly or of a house of chiefs; or

(g) Is, by any regulations made under section 37 of this order, disqualified for election to that House.

(2) (a) No person shall be qualified to be elected as an elected member of the house of assembly of a region or of the Southern Cameroons if he has, within a period of five years immediately before the date of election, been sentenced by a court in Nigeria to death, or to imprisonment (by whatever name called) for a term exceeding six months, upon conviction of any offence mentioned in the third schedule to this order, and has not received a free pardon.

(b) No person shall be qualified to be elected as an elected member of the Northern House of Assembly if he has, within a period of five years immediately before the date of election, been sentenced by a court in Nigeria to death, or to imprisonment (by whatever name called) for a term exceeding six months, upon conviction of any offence that is declared by the Governor of the Northern Region to be an offence that contains all the ingredients of any offence mentioned in the third schedule to this order, and has not received a free pardon.

[Chapter III deals with legislative powers and procedure. No house of representatives or legislative house shall remain in being for longer than five years.]

## CHAPTER IV EXECUTIVE POWERS

### *The Council of Ministers*

87. There shall be a Council of Ministers for the Federation.

88. The members of the Council of Ministers shall be—

(a) The Governor-General, who shall be the President of the Council;

(b) Three *ex officio* members—namely, the Chief Secretary of the Federation, the Attorney-General of the Federation and the Financial Secretary of the Federation;

(c) Ten members, who shall be styled Ministers, of whom—

(i) Three shall be appointed by the Governor-General by instrument under the public seal from among the representative members of the House of Representatives elected in the Northern Region;

(ii) Three shall be appointed as aforesaid from among the representative members of the House of Representatives elected in the Western Region;

- (iii) Three shall be appointed as aforesaid from among the representative members of the House of Representatives elected in the Eastern Region; and
- (iv) One shall be appointed as aforesaid from among the representative members of the House of Representatives elected in the Southern Cameroons;

- (d) Such temporary members as may be appointed in accordance with the provisions of section 91 of this order.

...

[Further provisions deal with the executive councils of the regions. Chapters V-VII deal with, respectively, judicial powers, finance and the public services. Chapter VIII contains certain transitional provisions.]

## ELECTIONS TO THE HOUSE OF REPRESENTATIVES OF THE FEDERATION

Elections to the House of Representatives of the Federation of Nigeria were the subject of the following Regulations, made under section 8 of the Nigeria (Constitution) Order in Council, 1954<sup>1</sup> and intended to be read together: the Elections (House of Representatives) (General Provisions) Regulations, 1954, legal notice 147 of 1954; the Elections (House of Representatives) (Eastern Region) Regulations, 1954, legal notice 127 of 1954; the Elections (House of Representatives) (Southern Cameroons) Regulations, 1954, legal notice 128 of 1954; the Elections (House of Representatives) (Northern Region) Regulations, 1954, legal notice 146 of 1954; the Elections (House of Representatives) (Western Region) Regulations, 1954, legal notice 148 of 1954; and the Elections (House of Representatives) (Lagos) Regulations, 1954, legal notice 150 of 1954. All but the last-mentioned regulations were made on 25 September 1954, were published in the Supplement to *Nigeria Gazette*, Vol. 41, No. 53 of 30 September 1954, and came into force on 1 October 1954. The Elections (House of Representatives) (Lagos) Regulations 1954 were made on 6 October 1954, were published in the Supplement to *Nigeria Gazette*, Vol. 41, No. 55, of 7 October 1954, and came into force on the same day.

Regulation 5 of the Elections (House of Representatives) (General Provisions) Regulations, 1954 reads:

"5. (1) The qualifications of persons entitled to vote at such elections shall be specified in regional regulations:

Provided that no person shall be entitled to vote, who

"(a) Is by virtue of his own act under any acknowledgement of allegiance, obedience or adherence to a foreign power or state;

"(b) Has, in any part of Her Majesty's dominions or in any territory under Her Majesty's protection or in any territory in which Her Majesty has from time to time jurisdiction, been sentenced to death or imprisonment by whatsoever name called for a term exceeding six months, and has not suffered the punishment to which he was sentenced or such other punishment as may by competent authority have been substituted therefore or received a free pardon; or

"(c) Is under any law in force in Nigeria declared to be of unsound mind or adjudged to be alunatic.

"(2) No person at any election shall be entitled to be registered or to vote [in] more than one electoral district."

Regulation 4 of the regulations for the Eastern Region provides:

"4. A person who is not disqualified by any provision of the General Regulations shall be entitled to be registered as an elector and, when registered, to vote—

"(a) If on the qualifying date he is a British subject or a British protected person of the age of twenty-one years or more, and

(b) If he is either—

(i) A native of the electoral district in which he seeks to be registered, or

(ii) On the qualifying date resident and has been resident in such electoral district for a period of not less than twelve months immediately preceding the qualifying date and

(c) If he applies to be registered in accordance with these regulations."

Regulation 7 of the regulations for Southern Cameroons states:

"7. Every person shall be entitled to be registered as an elector for a primary electoral unit and, when registered, to vote at the election in such primary electoral unit of a member of an electoral meeting of the electoral district who—

"(a) On the qualifying date is a British subject or a British protected person of the age of twenty-one years or upwards;

"(b) (i) Has been resident in the electoral district for a period of at least twelve months immediately preceding the qualifying date; or

(ii) Is a native of the electoral district in which such primary electoral unit is situate; and

"(c) Has during the period of twelve months immediately preceding the qualifying date paid tax anywhere in Nigeria or has been exempted from tax."

According to regulation 17 of the regulations for the Northern Region,

"17. Subject to the provisions of the General Regulations and of regulation 20 a person shall be

<sup>1</sup> See pp. 359-362.

entitled to be registered as an elector in the register of electors for a registration area, or to be an elector in a primary electoral area, who—

“(a) on the qualifying date is a male British subject or a male British protected person of the age of twenty-one years or upwards; and

“(b) Has during the period of twelve months immediately preceding the qualifying date paid tax anywhere in the Federation or was not liable to pay tax in that period by reason of being exempted; and

“(c) (i) has been resident for a continuous period of at least twelve months immediately preceding the qualifying date in the electoral district in which the registration area or the primary electoral area (as the case may be) is situate and is resident in such area on such date, or

“(ii) is a native of the registration area or the primary electoral area (as the case may be).”

The regulation 20 referred to in the provision just quoted relates to claims to be registered as electors in registers of electors.

Regulation 4(1) of the regulations for the Western Region provides as follows:

“4. (1) A person who is not disqualified by any provisions of the General Regulations shall be entitled to vote—

“(a) If on the qualifying date he is a British subject or a British-protected person, and

“(b) If he

“(i) Is a native of the division in which he seeks to cast his vote, or

“(ii) Is on the qualifying date, and has been for a period of not less than twelve months immediately preceding the qualifying date, resident in such division, and

“(c) If in the financial year immediately preceding that in which the election is held or within twelve months immediately preceding the qualifying date—

“(i) He has paid tax anywhere in Nigeria or would have paid such tax save for exemption from tax or

“(ii) Being a woman she has paid a rate of not less than £1.”

According to regulation 7 of the regulations for Lagos,

“7. A person who is not disqualified by any provision of the General Regulations shall be entitled to be registered as an elector, and when registered to vote at the election of a representative member, who—

“(a) On the qualifying date is a British subject or a British protected person of the age of twenty-one years or more; and

“(b) (i) has been resident in the electoral district for a continuous period of at least twelve months immediately preceding the qualifying date; or

“(ii) is a native of the electoral district.”

In the Eastern and Western Regions and in Lagos, the elections were to be by direct secret ballot. In the Northern Region and the Southern Cameroons, systems of indirect election through electoral colleges were to be used, provisions again being made to safeguard the secrecy of the voting.

Elections to the House of Representatives were completed in December 1954.

# UNITED STATES OF AMERICA

## DEVELOPMENTS CONCERNING GUAM, ALASKA, HAWAII, AND THE VIRGIN ISLANDS<sup>1</sup>

During 1954, a Revised Organic Act for the Virgin Islands came into effect, replacing the Organic Act of 1936.<sup>2</sup> Under this Act the legislative power and authority of the Virgin Islands is vested in a simple elective legislature and not, as previously, in the municipal councils of St. Thomas and St. Croix. Pertinent extracts from this Act appear below.

Among significant legislative enactments by territorial legislatures during the year was an act adopted

in the territory of Guam forbidding owners of certain business establishments to restrict their clientele on the basis of race or religion.<sup>3</sup> Educational and welfare programmes continued to operate in the territories in accordance with previous authorizations.<sup>4</sup> In addition, Alaska, Hawaii, and the Virgin Islands adopted enabling legislation authorizing the undertaking of slum clearance and urban redevelopment projects.<sup>5</sup>

<sup>3</sup> See p. 284, above.

<sup>4</sup> See p. 287, above.

<sup>5</sup> See p. 289, above.

<sup>1</sup> Note prepared by the United States Government.

<sup>2</sup> See *Yearbook on Human Rights for 1949*, pp. 284-5.

## THE REVISED ORGANIC ACT OF THE VIRGIN ISLANDS OF 1954

### *Bill of Rights*

*Sec. 3.* No law shall be enacted in the Virgin Islands which shall deprive any person of life, liberty, or property without due process of law or deny to any person therein equal protection of the laws.

In all criminal prosecutions the accused shall enjoy the right to be represented by counsel for his defence, to be informed of the nature and cause of the accusation, to have a copy thereof, to have a speedy and public trial, to be confronted with the witnesses against him, and to have compulsory process for obtaining witnesses in his favour.

No person shall be held to answer for a criminal offence without due process of law, and no person for the same offence shall be twice put in jeopardy of punishment, nor shall be compelled in any criminal cause to give evidence against himself; nor shall any person sit as judge or magistrate in any case in which he has been engaged as attorney or prosecutor.

All persons shall be bailable by sufficient sureties in the case of criminal offences, except for first-degree murder or any capital offence when the proof is evident or the presumption great.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

No law impairing the obligation of contracts shall be enacted.

No person shall be imprisoned or shall suffer forced labour for debt.

All persons shall have the privilege of the writ of *habeas corpus* and the same shall not be suspended except as herein expressly provided.

No *ex post facto* law or bill of attainder shall be enacted.

Private property shall not be taken for public use except upon payment of just compensation ascertained in the manner provided by law.

The right to be secure against unreasonable searches and seizures shall not be violated.

No warrant for arrest or search shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

Slavery shall not exist in the Virgin Islands.

Involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted by a court of law, shall not exist in the Virgin Islands.

No law shall be passed abridging the freedom of speech or of the press or the right of the people peaceably to assemble and petition the government for the redress of grievances.

No law shall be made respecting an establishment of religion or prohibiting the free exercise thereof.

No person who advocates, or who aids or belongs to any party, organization, or association which advocates the overthrow by force or violence of the Government of the Virgin Islands or of the United States shall be qualified to hold any office of trust or profit under the Government of the Virgin Islands.

No money shall be paid out of the Virgin Islands

treasury except in accordance with an Act of Congress or money bill of the legislature and on warrant drawn by the proper officer.

The contracting of polygamous or plural marriages is prohibited.

The employment of children under the age of sixteen years in any occupation injurious to health or morals or hazardous to life or limb is prohibited.

Nothing contained in this Act shall be construed to limit the power of the legislature herein provided to enact laws for the protection of life, the public health, or the public safety.

#### *Franchise*

*Sec. 4.* The franchise shall be vested in residents of the Virgin Islands who are citizens of the United States, twenty-one years of age or over. Additional qualifications may be prescribed by the legislature: *Provided, however,* That no property, language, or income qualification shall ever be imposed upon or required of any voter, nor shall any discrimination in qualification be made or based upon difference in race, color, sex, or religious belief.

#### *Legislative Branch*

*Sec. 5. (a)* The legislative power and authority of the Virgin Islands shall be vested in a legislature, consisting of one house, to be designated the "Legislature of the Virgin Islands", herein referred to as the legislature.

...

*Sec. 6. ...*

*(b)* No person shall be eligible to be a member of the legislature who is not a citizen of the United States, who has not attained the age of twenty-five years, who is not a qualified voter in the Virgin Islands, who has not been a bona fide resident of the Virgin Islands for at least three years next preceding the date of his election, or who has been convicted of a felony or of a crime involving moral turpitude and has not received a pardon restoring his civil rights. Federal employees and persons employed in the legislative, executive or judicial branches of the government of the Virgin Islands shall not be eligible for membership in the legislature.



PART III

**INTERNATIONAL INSTRUMENTS**

# UNITED NATIONS

## CONVENTION RELATING TO THE STATUS OF STATELESS PERSONS

Adopted on 23 September 1954 and opened for signature on 28 September 1954<sup>1</sup>

### PREAMBLE

*The High Contracting Parties,*

*Considering* that the Charter of the United Nations and the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly of the United Nations have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination,

*Considering* that the United Nations has, on various occasions, manifested its profound concern for stateless persons and endeavoured to assure stateless persons the widest possible exercise of these fundamental rights and freedoms,

*Considering* that only those stateless persons who are also refugees are covered by the Convention relating to the Status of Refugees of 28 July 1951, and that there are many stateless persons who are not covered by that convention,

*Considering* that it is desirable to regulate and improve the status of stateless persons by an international agreement,

HAVE AGREED as follows:

### Chapter I

#### GENERAL PROVISIONS

##### Article 1

#### DEFINITION OF THE TERM "STATELESS PERSON"

1. For the purpose of this convention, the term "stateless person" means a person who is not considered as a national by any State under the operation of its law.

2. This convention shall not apply:

(i) To persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance so long as they are receiving such protection or assistance;

(ii) To persons who are recognized by the competent authorities of the country in which they have taken residence as having the rights and obligations which are attached to the possession of the nationality of that country;

(iii) To persons with respect to whom there are serious reasons for considering that:

(a) They have committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provisions in respect of such crimes;

(b) They have committed a serious non-political crime outside the country of their residence prior to their admission to that country;

(c) They have been guilty of acts contrary to the purposes and principles of the United Nations.

##### Article 2

#### GENERAL OBLIGATIONS

Every stateless person has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order.

##### Article 3

#### NON-DISCRIMINATION

The contracting States shall apply the provisions of this convention to stateless persons without discrimination as to race, religion or country of origin.

##### Article 4

#### RELIGION

The contracting States shall accord to stateless persons within their territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practise their religion and freedom as regards the religious education of their children.

##### Article 5

#### RIGHTS GRANTED APART FROM THIS CONVENTION

Nothing in this convention shall be deemed to impair any rights and benefits granted by a contracting State to stateless persons apart from this convention.

##### Article 6

#### THE TERM "IN THE SAME CIRCUMSTANCES"

For the purpose of this convention, the term "in the same circumstances" implies that any requirements (including requirements as to length and conditions of sojourn or residence) which the particular individual would have to fulfil for the enjoyment of the right in question, if he were not a stateless person,

<sup>1</sup> Adopted by the United Nations Conference on the Status of Stateless Persons. See further pp. 413-414 below.

must be fulfilled by him, with the exception of requirements which by their nature a stateless person is incapable of fulfilling.

#### *Article 7*

##### EXEMPTION FROM RECIPROCITY

1. Except where this convention contains more favourable provisions, a contracting State shall accord to stateless persons the same treatment as is accorded to aliens generally.

2. After a period of three years' residence, all stateless persons shall enjoy exemption from legislative reciprocity in the territory of the contracting States.

3. Each contracting State shall continue to accord to stateless persons the rights and benefits to which they were already entitled, in the absence of reciprocity, at the date of entry into force of this convention for that State.

4. The contracting States shall consider favourably the possibility of according to stateless persons, in the absence of reciprocity, rights and benefits beyond those to which they are entitled according to paragraphs 2 and 3, and to extending exemption from reciprocity to stateless persons who do not fulfil the conditions provided for in paragraphs 2 and 3.

The provisions of paragraphs 2 and 3 apply both to the rights and benefits referred to in articles 13, 18, 19, 21 and 22 of this convention and to rights and benefits for which this convention does not provide.

#### *Article 8*

##### EXEMPTION FROM EXCEPTIONAL MEASURES

With regard to exceptional measures which may be taken against the person, property or interests of nationals or former nationals of a foreign State, the contracting States shall not apply such measures to a stateless person solely on account of his having previously possessed the nationality of the foreign State in question. Contracting States which, under their legislation, are prevented from applying the general principle expressed in this article shall, in appropriate cases, grant exemptions in favour of such stateless persons.

#### *Article 9*

##### PROVISIONAL MEASURES

Nothing in this convention shall prevent a contracting State, in time of war or other grave and exceptional circumstances, from taking provisionally measures which it considers to be essential to the national security in the case of a particular person, pending a determination by the contracting State that that person is in fact a stateless person and that the continuance of such measures is necessary in his case in the interests of national security.

#### *Article 10*

##### CONTINUITY OF RESIDENCE

1. Where a stateless person has been forcibly displaced during the Second World War and removed to the territory of a contracting State, and is resident there, the period of such enforced sojourn shall be considered to have been lawful residence within that territory.

2. Where a stateless person has been forcibly displaced during the Second World War from the territory of a contracting State and has, prior to the date of entry into force of this convention, returned there for the purpose of taking up residence, the period of residence before and after such enforced displacement shall be regarded as one uninterrupted period for any purposes for which uninterrupted residence is required.

#### *Article 11*

##### STATELESS SEAMEN

In the case of stateless persons regularly serving as crew members on board a ship flying the flag of a contracting State, that State shall give sympathetic consideration to their establishment on its territory and the issue of travel documents to them or their temporary admission to its territory particularly with a view to facilitating their establishment in another country.

#### **Chapter II**

##### JURIDICAL STATUS

#### *Article 12*

##### PERSONAL STATUS

1. The personal status of a stateless person shall be governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence.

2. Rights previously acquired by a stateless person and dependent on personal status, more particularly rights attaching to marriage, shall be respected by a contracting State, subject to compliance, if this be necessary, with the formalities required by the law of that State, provided that the right in question is one which would have been recognized by the law of that State had he not become stateless.

#### *Article 13*

##### MOVABLE AND IMMOVABLE PROPERTY

The contracting States shall accord to a stateless person treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property.

*Article 14*

## ARTISTIC RIGHTS AND INDUSTRIAL PROPERTY

In respect of the protection of industrial property, such as inventions, designs or models, trade marks, trade names, and of rights in literary, artistic and scientific works, a stateless person shall be accorded in the country in which he has his habitual residence the same protection as is accorded to nationals of that country. In the territory of any other contracting State, he shall be accorded the same protection as is accorded in that territory to nationals of the country in which he has his habitual residence.

*Article 15*

## RIGHT OF ASSOCIATION

As regards non-political and non-profit-making associations and trade unions the contracting States shall accord to stateless persons lawfully staying in their territory treatment as favourable as possible, and in any event, not less favourable than that accorded to aliens generally in the same circumstances.

*Article 16*

## ACCESS TO COURTS

1. A stateless person shall have free access to the courts of law on the territory of all contracting States.

2. A stateless person shall enjoy in the contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the courts, including legal assistance and exemption from *cautio judicatum solvi*.

3. A stateless person shall be accorded in the matters referred to in paragraph 2 in countries other than that in which he has his habitual residence the treatment granted to a national of the country of his habitual residence.

**Chapter III**

## GAINFUL EMPLOYMENT

*Article 17*

## WAGE-EARNING EMPLOYMENT

1. The contracting States shall accord to stateless persons lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the right to engage in wage-earning employment.

2. The contracting States shall give sympathetic consideration to assimilating the rights of all stateless persons with regard to wage-earning employment to those of nationals, and in particular of those stateless persons who have entered their territory pursuant to programmes of labour recruitment or under immigration schemes.

*Article 18*

## SELF-EMPLOYMENT

The contracting States shall accord to a stateless person lawfully in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the right to engage on his own account in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies.

*Article 19*

## LIBERAL PROFESSIONS

Each contracting State shall accord to stateless persons lawfully staying in their territory who hold diplomas recognized by the competent authorities of that State, and who are desirous of practising a liberal profession, treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

**Chapter IV**

## WELFARE

*Article 20*

## RATIONING

Where a rationing system exists, which applies to the population at large and regulates the general distribution of products in short supply, stateless persons shall be accorded the same treatment as nationals.

*Article 21*

## HOUSING

As regards housing, the contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to stateless persons lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

*Article 22*

## PUBLIC EDUCATION

1. The contracting States shall accord to stateless persons the same treatment as is accorded to nationals with respect to elementary education.

2. The contracting States shall accord to stateless persons treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.

*Article 23*

## PUBLIC RELIEF

The contracting States shall accord to stateless persons lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals.

*Article 24*

## LABOUR LEGISLATION AND SOCIAL SECURITY

1. The contracting states shall accord to stateless persons lawfully staying in their territory the same treatment as is accorded to nationals in respect of the following matters:

(a) In so far as such matters are governed by laws or regulations or are subject to the control of administrative authorities: remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age of employment, apprenticeship and training, women's work and the work of young persons, and the enjoyment of the benefits of collective bargaining;

(b) Social security (legal provisions in respect of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which, according to national laws or regulations, is covered by a social security scheme), subject to the following limitations:

(i) There may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition;

(ii) National laws or regulations of the country of residence may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension.

2. The right to compensation for the death of a stateless person resulting from employment injury or from occupational disease shall not be affected by the fact that the residence of the beneficiary is outside the territory of the contracting State.

3. The contracting States shall extend to stateless persons the benefits of agreements concluded between them, or which may be concluded between them in the future, concerning the maintenance of acquired rights and rights in the process of acquisition in regard to social security, subject only to the conditions which apply to nationals of the States signatory to the agreements in question.

4. The contracting States will give sympathetic consideration to extending to stateless persons so far as possible the benefits of similar agreements which may at any time be in force between such contracting States and non-contracting States.

**Chapter V**

## ADMINISTRATIVE MEASURES

*Article 25*

## ADMINISTRATIVE ASSISTANCE

1. When the exercise of a right by a stateless person would normally require the assistance of authorities of a foreign country to whom he cannot have recourse, the contracting State in whose territory he is residing shall arrange that such assistance be afforded to him by their own authorities.

2. The authority or authorities mentioned in paragraph 1 shall deliver or cause to be delivered under their supervision to stateless persons such documents or certifications as would normally be delivered to aliens by or through their national authorities.

3. Documents or certifications so delivered shall stand in the stead of the official instruments delivered to aliens by or through their national authorities, and shall be given credence in the absence of proof to the contrary.

4. Subject to such exceptional treatment as may be granted to indigent persons, fees may be charged for the services mentioned herein, but such fees shall be moderate and commensurate with those charged to nationals for similar services.

5. The provisions of this article shall be without prejudice to articles 27 and 28.

*Article 26*

## FREEDOM OF MOVEMENT

Each contracting State shall accord to stateless persons lawfully in its territory the right to choose their place of residence and to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances.

*Article 27*

## IDENTITY PAPERS

The contracting States shall issue identity papers to any stateless person in their territory who does not possess a valid travel document.

*Article 28*

## TRAVEL DOCUMENTS

The contracting States shall issue to stateless persons lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require, and the provisions of the schedule to this convention<sup>1</sup> shall apply with respect to such documents. The contract-

<sup>1</sup> The schedule referred to, and the model travel document appended thereto, are not here reproduced.

ing States may issue such a travel document to any other stateless person in their territory; they shall in particular give sympathetic consideration to the issue of such a travel document to stateless persons in their territory who are unable to obtain a travel document from the country of their lawful residence.

#### *Article 29*

#### FISCAL CHARGES

1. The contracting States shall not impose upon stateless persons duties, charges or taxes, of any description whatsoever, other or higher than those which are or may be levied on their nationals in similar situations.

2. Nothing in the above paragraph shall prevent the application to stateless persons of the laws and regulations concerning charges in respect of the issue to aliens of administrative documents including identity papers.

#### *Article 30*

#### TRANSFER OF ASSETS

1. A contracting State shall, in conformity with its laws and regulations, permit stateless persons to transfer assets which they have brought into its territory, to another country where they have been admitted for the purposes of resettlement.

2. A contracting State shall give sympathetic consideration to the application of stateless persons for permission to transfer assets wherever they may be and which are necessary for their resettlement in another country to which they have been admitted.

#### *Article 31*

#### EXPULSION

1. The contracting States shall not expel a stateless person lawfully in their territory save on grounds of national security or public order.

2. The expulsion of such a stateless person shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the stateless person shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.

3. The contracting States shall allow such a stateless person a reasonable period within which to seek legal admission into another country. The contracting States reserve the right to apply during that period such internal measures as they may deem necessary.

#### *Article 32*

#### NATURALIZATION

The contracting States shall as far as possible facilitate the assimilation and naturalization of state-

less persons. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.

### **Chapter VI**

### FINAL CLAUSES

#### *Article 33*

#### INFORMATION ON NATIONAL LEGISLATION

The contracting States shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of this convention.

#### *Article 34*

#### SETTLEMENT OF DISPUTES

Any dispute between parties to this convention relating to its interpretation or application, which cannot be settled by other means, shall be referred to the International Court of Justice at the request of any one of the parties to the dispute.

#### *Article 35*

#### SIGNATURE, RATIFICATION AND ACCESSION

1. This convention shall be open for signature at the Headquarters of the United Nations until 31 December 1955.

2. It shall be open for signature on behalf of:

- (a) Any State Member of the United Nations;
- (b) Any other State invited to attend the United Nations Conference on the Status of Stateless Persons; and

(c) Any State to which an invitation to sign or to accede may be addressed by the General Assembly of the United Nations.

3. It shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

4. It shall be open for accession by the States referred to in paragraph 2 of this article. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

#### *Article 36*

#### TERRITORIAL APPLICATION CLAUSE

1. Any State may, at the time of signature, ratification or accession, declare that this convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect

as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.

3. With respect to those territories to which this convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this convention to such territories, subject, where necessary for constitutional reasons, to the consent of the governments of such territories.

#### *Article 37*

##### FEDERAL CLAUSE

In the case of a federal or non-unitary State, the following provisions shall apply:

(a) With respect to those articles of this convention that come within the legislative jurisdiction of the federal legislative authority, the obligations of the federal Government shall to this extent be the same as those of Parties which are not federal States;

(b) With respect to those articles of this convention that come within the legislative jurisdiction of constituent States, provinces or cantons which are not, under the constitutional system of the federation, bound to take legislative action, the federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of states, provinces or cantons at the earliest possible moment.

(c) A federal State Party to this convention shall, at the request of any other contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention showing the extent to which effect has been given to that provision by legislative or other action.

#### *Article 38*

##### RESERVATIONS

1. At the time of signature, ratification or accession any State may make reservations to articles of the Convention other than to articles 1, 3, 4, 16 (1) and 33 to 42 inclusive.

2. Any State making a reservation in accordance with paragraph 1 of this article may at any time withdraw the reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

#### *Article 39*

##### ENTRY INTO FORCE

1. This convention shall come into force on the ninetieth day following the day of deposit of the sixth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the sixth instrument of ratification or accession, the Convention shall enter into force on the ninetieth day following the date of deposit by such State of its instrument of ratification or accession.

#### *Article 40*

##### DENUNCIATION

1. Any Contracting State may denounce this convention at any time by a notification addressed to the Secretary-General of the United Nations.

2. Such denunciation shall take effect for the contracting State concerned one year from the date upon which it is received by the Secretary-General of the United Nations.

3. Any State which has made a declaration or notification under article 36 may, at any time thereafter, by a notification to the Secretary-General of the United Nations, declare that the Convention shall cease to extend to such territory one year after the date of receipt of the notification by the Secretary-General.

#### *Article 41*

##### REVISION

1. Any contracting State may request revision of this convention at any time by a notification addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall recommend the steps, if any, to be taken in respect of such request.

#### *Article 42*

##### NOTIFICATIONS BY THE SECRETARY-GENERAL OF THE UNITED NATIONS

The Secretary-General of the United Nations shall inform all Members of the United Nations and non-Member States referred to in article 35:

(a) Of signatures, ratifications and accessions in accordance with article 35;

(b) Of declarations and notifications in accordance with article 36;

(c) Of reservations and withdrawals in accordance with article 38;

(d) Of the date on which this convention will come into force in accordance with article 39;

(e) Of denunciations and notifications in accordance with article 40;

(f) Of requests for revision in accordance with article 41.

IN FAITH WHEREOF the undersigned, duly authorized, have signed this convention on behalf of their respective Governments.

DONE at New York, this twenty-eighth day of September, one thousand nine hundred and fifty-four, in a single copy, of which the English, French and Spanish texts are equally authentic and which shall

remain deposited in the archives of the United Nations, and certified true copies of which shall be delivered to all Members of the United Nations and to the non-member States referred to in article 35.



## INTERNATIONAL LABOUR ORGANISATION

### INSTRUMENTS ADOPTED WITHIN THE INTERNATIONAL LABOUR ORGANISATION IN 1954<sup>1</sup>

In addition to recommendation No. 98 concerning holidays with pay, the text of which appears below, the following were among the texts adopted by the International Labour Conference at its 37th Session, in 1954: the resolution concerning utilization of holiday facilities, the resolution concerning the reduction of hours of work and the resolution concerning the vocational rehabilitation of physically handicapped mine-workers. These texts are to be found in the *Official Bulletin* of the International Labour Office, Vol. XXXVII, No. 1 (31 August 1954).

A memorandum (No. 51) concerning conditions of employment in road transport and a resolution (No. 52) concerning welfare facilities for dock-workers were adopted at the fifth session of the Inland Transport Committee (Geneva, February 1954). The texts of these instruments are to be found in *Official Bulletin*, Vol. XXXVII, No. 2 (15 September 1954).

A resolution (No. 26) concerning unemployment among salaried employees and salaried professional workers, a resolution (No. 28) concerning conditions of employment of teaching staff, a resolution (No. 32)

concerning unemployment among performers, a resolution (No. 33) concerning weekly rest periods in commerce and offices and a resolution (No. 35) concerning labour inspection were adopted at the third session of the Advisory Committee on Salaried Employees and Professional Workers (Geneva, May 1954). The texts are reproduced in *Official Bulletin*, Vol. XXXVII, No. 3 (15 October 1954).

Conclusions (No. 42) concerning supplementary pension schemes in the iron and steel industry were adopted at the fifth session of the Iron and Steel Committee (Geneva, October 1954). The text is to be found in *Official Bulletin*, Vol. XXXVII, No. 5 (15 December 1954).

A memorandum (No. 44) concerning practical methods of labour-management co-operation in metal-working plants, a memorandum (No. 45) concerning the regularization of production and employment at a high level in the metal trades and a resolution (No. 48) concerning hours of work in the metal trades were adopted at the fifth session of the Metal Trades Committee (Geneva, October-November 1954). The full texts are to be found in *Official Bulletin*, Vol. XXXVII, No. 6 (20 December 1954).

<sup>1</sup> Note based upon information kindly furnished by the International Labour Office.

### RECOMMENDATION No. 98 CONCERNING HOLIDAYS WITH PAY

(Holidays with Pay Recommendation, 1954)

Adopted by the International Labour Conference at its 37th Session, Geneva, 1954<sup>1</sup>

The Conference recommends that the following provisions should be applied and that each Member should report to the International Labour Office as requested by the Governing Body concerning the measures taken to give effect thereto.

1. (1) Having regard to the variety of national practices, the provisions of this recommendation may be given effect by means of public or voluntary action, through legislation, statutory wage fixing machinery, collective agreements or arbitration awards, or in any other manner consistent with national practice, as may be appropriate under national conditions.

(2) The adoption of any procedures specified in sub-paragraph (1) should not prejudice the particular concern of governments to call into action all appropriate constitutional or legal machinery when voluntary action, action by employers' and workers' organizations or collective agreements do not give speedy and satisfactory results.

2. The following forms of action might be considered, *inter alia*, by the competent authority in the various countries, wherever appropriate:

(a) Encouraging the provision of holidays with pay through collective agreements freely concluded by both parties participating in collective bargaining machinery;

<sup>1</sup> Text published in the *Official Bulletin* of the International Labour Office, Vol. XXXVII, No. 1, of 31 August 1954.

(b) Assisting employers' and workers' organizations to establish joint voluntary machinery, or establishing, where necessary, statutory machinery, which would, *inter alia*, be competent to determine annual holidays with pay in a particular trade or activity;

(c) Granting powers in the field of annual holidays with pay to existing statutory wage fixing bodies where these bodies do not already possess such powers;

(d) Collecting detailed information regarding provisions governing annual holidays with pay, and making such information available to employers' and workers' organizations.

3. This recommendation applies to all employed persons, with the exception of seafarers, agricultural workers and persons employed in undertakings or establishments in which only members of the employer's family are engaged.

4. (1) Every person covered by this recommendation should be entitled to an annual holiday with pay. The duration of the annual holiday with pay should be proportionate to the length of service performed with one or more employers during the year concerned and should be not less than two working weeks for twelve months of service.

(2) The appropriate machinery in each country may, where appropriate, determine—

- (a) The number of days which a worker should have worked to become eligible for the annual holiday with pay or for a proportion thereof;
- (b) The method of calculating the period of service of a worker in a particular year for the purpose of determining the annual holiday with pay to be taken by him in respect of that year.

(3) It should be left to the appropriate machinery in each country to provide that, where employment ceases before the worker has completed the service necessary to become eligible for an annual holiday with pay in accordance with the provisions of subparagraphs (1) and (2) above, he should be entitled to a holiday with pay proportionate to the period of service performed or to compensation in lieu thereof or to the equivalent holiday credit, whichever is the more practicable.

5. The appropriate machinery in each country should determine the days such as public or customary holidays, days of weekly rest, days of absence from work on account of accident at work or sickness, and periods of rest occasioned by pre- and post-natal care which are not to be counted as days of holiday with pay for the purpose of these provisions.

6. It should be left to the appropriate machinery in each country to determine whether the duration of the annual holiday with pay should increase with length of service or by reason of other factors.

7. (1) Interruptions of work during which the

worker receives wages should not affect entitlement to or the duration of the annual holiday with pay.

(2) Interruptions of work which do not give rise to a termination of the employment relationship or contract should not affect any entitlement to a holiday with pay which has been accumulated prior to the interruption.

(3) The appropriate machinery in each country should determine the manner in which the principles set out in sub-paragraphs (1) and (2) above should be applied to interruptions of work occasioned by—

- (a) Sickness, accident and periods of rest occasioned by pre- and post-natal care;
- (b) Absences on account of family events;
- (c) Military obligations;
- (d) The exercise of civic rights and duties;
- (e) The performance of duties arising from trade union responsibilities;
- (f) Changes in the management of the undertaking;
- (g) Intermittent involuntary unemployment.

8. The entitlement of a worker to the annual holiday with pay and the duration of such holiday should not be affected by interruptions occasioned by pregnancy and confinement if the worker concerned resumes employment and if her absence does not exceed a specified period.

9. (1) There should be consultation between employers and workers regarding the time when the annual holiday with pay is to be taken. In determining this time the personal wishes of the worker should be taken into consideration as far as possible.

(2) The worker should be notified of the date at which the annual holiday with pay is to begin sufficiently in advance so that he can make use of his holiday in an appropriate manner.

10. Young workers under eighteen years of age should receive a longer period of annual holiday with pay than the minimum provided for in paragraph 4.

11. Every person taking an annual holiday with pay should receive in respect of the full period of the holiday, at the minimum, either—

- (a) The remuneration determined for such holiday period by collective agreements, arbitration awards or national laws and regulations; or
- (b) His normal remuneration, as prescribed by national laws or regulations or by any other means established by national practice, including the cash equivalent of his remuneration in kind, if any.

12. It should be left to collective agreements, arbitration awards, or national laws and regulations, to prescribe the system of holiday records which should be maintained and the particulars which should be included in such records, as may be necessary for the proper administration of provisions

or regulations concerning annual holidays with pay.

13. Preliminary consultation, in such a manner and to such an extent as may be consistent with national laws and practice, should take place between representative organizations of employers and workers and the competent authorities prior to the framing of laws or regulations governing annual holidays with pay.

14. Representative organizations of employers and workers should be given an opportunity to participate on a basis of complete equality in the operation of bodies entrusted by national laws or regulations with the determination of annual holidays with pay or in the implementation of regulations concerning annual holidays with pay, or should be consulted or have a right to be heard in such a manner and to such an extent as may be consistent with national laws and practice.

## REPORTS OF THE COMMITTEE ON FREEDOM OF ASSOCIATION

established by the Governing Body of the International Labour Office  
(Twelfth, thirteenth and fourteenth reports)

### SUMMARY<sup>1</sup>

The Committee on Freedom of Association, set up by the Governing Body at its 117th Session (Geneva, November 1951) and entrusted with the preliminary examination of allegations concerning trade union rights submitted to the International Labour Organisation, held six meetings in 1954. In the course of those meetings the Committee adopted unanimously its twelfth, thirteenth and fourteenth reports.<sup>2</sup> The Governing Body unanimously approved the twelfth report on 11 March 1954, and the thirteenth report on 28 May 1954; the fourteenth report of the Committee on Freedom of Association was adopted unanimously by the Governing Body, with one abstention, on 19 November 1954.

In the course of its six meetings in 1954 the Committee had before it a total of thirty-two cases. Of these the Committee recommended that twenty should, subject to certain observations, be dismissed as not calling for further examination; that three cases of complaints which were submitted to it for an opinion should be dismissed without being communicated to the government concerned; four cases were the subject of an interim report by the Committee; the Committee recommended that one case, in respect of which, despite repeated reminders, no reply had been received from the government concerned, called for further examination on the part of the Governing Body; a request for the re-opening of another case concerning which the Governing Body had already been called to give a decision was considered by the Committee, which, subject to certain observations, recommended that no further action should be taken;

in the remaining three cases, the Committee reached certain conclusions which it wished to draw to the attention of the Governing Body.

Twenty of the cases are dealt with in the Twelfth Report of the Committee on Freedom of Association. The Committee recommended that twelve of them (Japan, Italy, Cuba, Greece, Colombia, Burma, France (various African territories), Switzerland, Mexico, India, the United Kingdom and Iran) should be dismissed as not calling for further examination, mostly due to lack of evidence or to the fact that the allegations were too vague or of a political nature, but it made certain observations in respect of some of them for communication to the Governments concerned. In one case a government had withdrawn the passport of a trade union representative, thereby preventing him from attending meetings of the international workers' organization to which his union was affiliated and of which he himself was an officer, on the ground that the person concerned had carried on anti-national activities abroad by means of publications which were slanderous and insulting towards his country. The Committee, while recognizing that refusal to grant a passport is a matter within the sovereignty of a State, emphasized that the right of national workers' organizations to affiliate to international workers' organizations, a right which constitutes an important aspect of freedom of association, normally carries with it the right for representatives of national organizations to participate in the work of the international organizations to which their organizations are affiliated. Subject to this observation, the Committee recommended that the case did not call for further observation.

Of the remaining seven cases dealt with in the Twelfth Report, the Committee reached certain conclusions in respect of three of them (Union of South Africa, France (Madagascar) and France (Tunisia)) which it wished to draw to the attention of the Governing Body. In particular, it drew attention,

<sup>1</sup> Summary prepared by the International Labour Office. For the terms of reference of the Committee, see *Tearbook on Human Rights for 1951*, pp. 574-575. For a summary of the first six reports, see *Tearbook on Human Rights for 1952*, pp. 395-397, and for a summary of the seventh-eleventh reports, see *Tearbook on Human Rights for 1953*, pp. 347-350.

<sup>2</sup> For the full text of the twelfth report, see *Eighth Report of the International Labour Organisation to the United Nations*, Appendix II. The texts of the thirteenth and fourteenth reports appear in *Official Bulletin of the International Labour Office*, Vol. XXXVII, No. 4, of 30 November 1954.

first, to the principle that workers, without distinction whatsoever, should have the right to join organizations of their own choosing and, secondly, to the importance of due process in cases in which measures of a political nature may indirectly affect the exercise of trade union rights. The Committee also drew attention to the text of the resolution adopted by the International Labour Conference at its 35th Session (1952), which declares, in particular, that the fundamental and permanent mission of the trade union movement is the economic and social advancement of the workers and that when trade unions, in accordance with the national law and practice of their respective countries and at the decision of their members, decide to establish relations with a political party or to undertake constitutional political action as a means towards the advancement of their economic and social objectives, such political relations or actions should not be of such a nature as to compromise the continuance of the trade union movement or its social and economic functions, irrespective of political changes in the country.

Two cases relating to metropolitan France and France (Tunisia) were the subject of interim reports by the Committee. A case relating to Cuba was dismissed without being communicated to the Government concerned, as was a request for the reopening of a case against New Zealand. The Committee recommended that a case relating to Hungary, in which, despite repeated reminders, no reply had been received from the Government concerned, called for further examination on the part of the Governing Body.

Five cases are dealt with in the Thirteenth Report

of the Committee on Freedom of Association. Four of these (the Netherlands, Egypt, the Lebanon and the United Kingdom) were dismissed as not calling for further examination. In one case which was dismissed without being communicated to the Government concerned (France (Tunisia)), it was alleged that the banning of a procession which was to have been held on May Day constituted a breach of freedom of association; but the Committee found that the ban had in fact applied to a demonstration which was to have been held on a specific public thoroughfare and that it had been possible to hold a public meeting on the same day in a neighbouring place.

Six cases are dealt with in the Fourteenth Report of the Committee on Freedom of Association. Two cases (Iran and Greece) were the subject of an interim report by the Committee; one case (Argentina) was dismissed without being communicated to the government concerned; and four (France (Sudan), the United States, the United Kingdom (British Guiana) and Costa Rica) were dismissed as not calling for further examination, subject to certain observations and recommendations made by the Committee for communication to the Governments concerned. In one case (Costa Rica) the Committee considered that it was not proper to proceed with a complaint against proposed legislation that did not emanate from the Government; but this view was not intended to prejudice a possible examination of the substance of the case if the Bill in question (which, it was alleged by the complainants, would prohibit an entire sector of the working class from performing official functions in trade union organizations) should become law and if a further complaint were made with regard to it.

## UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

### INSTRUMENTS ADOPTED BY THE INTERGOVERNMENTAL CONFERENCE ON THE PROTECTION OF CULTURAL PROPERTY IN THE EVENT OF ARMED CONFLICT, THE HAGUE, 1954

#### NOTE<sup>1</sup>

An intergovernmental conference, convened by UNESCO for the purpose of drawing up and adopting a convention for the protection of cultural property in the event of armed conflict, regulations for the execution of that convention and a protocol to the convention, was held at the Hague, on the invitation of the Government of the Netherlands, from 21 April to 14 May 1954. On 14 May 1954 the conference adopted its Final Act, to which were attached the three instruments referred to (see below), together with three resolutions.

In resolution I, the conference expressed the hope that the competent organs of the United Nations will decide, in the event of military action being taken in implementation of the Charter, to ensure application of the provisions of the conventions by the armed forces taking part in such action. Resolution II dealt with the establishment of national advisory committees whose function would be to facilitate the implementation of the convention. In resolution III the conference requested the Director-General to convene a meeting of the High Contracting Parties as soon as possible after the entry into force of the convention.

The convention and the regulations were signed by the following States: Andorra, Australia, Austria, Belgium, Brazil, Burma, Byelorussian Soviet Socialist Republic, Cambodia, China, Cuba, Czechoslovakia, Denmark, Ecuador, Egypt, Eire, El Salvador, France,

<sup>1</sup> Note based upon information kindly furnished, together with the Final Act of the Conference, by the UNESCO Secretariat.

Federal Republic of Germany, Greece, Hashemite Kingdom of the Jordan, Hungary, India, Indonesia, Iran, Iraq, Israel, Italy, Japan, Lebanon, Libya, Luxembourg, Mexico, Monaco, Netherlands, New Zealand, Nicaragua, Norway, Philippines, Poland, Portugal, Romania, San Marino, Spain, Syria, Ukrainian Soviet Socialist Republic, United Kingdom, Union of Soviet Socialist Republics, United States of America, Uruguay and Yugoslavia.

The protocol was signed by the following States: Austria, Belgium, Brazil, Burma, Byelorussian Soviet Socialist Republic, Cambodia, China, Cuba, Czechoslovakia, Denmark, Ecuador, Egypt, El Salvador, France, Federal Republic of Germany, Greece, Hashemite Kingdom of the Jordan, India, Indonesia, Iran, Iraq, Italy, Japan, Lebanon, Libya, Luxembourg, Mexico, Monaco, Netherlands, Nicaragua, Norway, Philippines, Poland, San Marino, Spain, Syria, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Uruguay and Yugoslavia.

At its eighth session, 12 November – 10 December 1954, the General Conference of UNESCO accepted the responsibilities devolving upon UNESCO under the convention and the protocol, recommended States invited to take part in the Conference to become parties to the convention and protocol and to extend this application to the territories for whose international relations they are responsible and authorized the Director-General to convene, as soon as possible after the entry into force of the convention, a meeting of the High Contracting Parties (resolution IV. 1.4.133).

### CONVENTION FOR THE PROTECTION OF CULTURAL PROPERTY IN THE EVENT OF ARMED CONFLICT of 14 May 1954

#### *The High Contracting Parties*

*Recognizing* that cultural property has suffered grave damage during recent armed conflicts and that, by reason of the developments in the technique of warfare, it is in increasing danger of destruction;

*Being convinced* that damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world;

*Considering* that the preservation of the cultural heritage is of great importance for all peoples of the world and that it is important that this heritage should receive international protection;

*Guided* by the principles concerning the protection of cultural property during armed conflict, as established in the Conventions of The Hague of 1899 and of 1907 and in the Washington Pact of 15 April 1935;

*Being of the opinion* that such protection cannot be effective unless both national and international

measures have been taken to organize it in time of peace;

*Being determined* to take all possible steps to protect cultural property;

HAVE AGREED upon the following provisions:

### Chapter I

## GENERAL PROVISIONS REGARDING PROTECTION

### Article 1

#### DEFINITION OF CULTURAL PROPERTY

For the purposes of the present convention, the term "cultural property" shall cover, irrespective of origin or ownership:

(a) Movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above;

(b) Buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in sub-paragraph (a), such as museums, large libraries and depositories of archives, and refuges intended to shelter, in the event of armed conflict, the movable cultural property defined in sub-paragraph (a);

(c) Centres containing a large amount of cultural property as defined in sub-paragraphs (a) and (b), to be known as "centres containing monuments".

### Article 2

#### PROTECTION OF CULTURAL PROPERTY

For the purposes of the present convention, the protection of cultural property shall comprise the safeguarding of and respect for such property.

### Article 3

#### SAFEGUARDING OF CULTURAL PROPERTY

The High Contracting Parties undertake to prepare in time of peace for the safeguarding of cultural property situated within their own territory against the foreseeable effects of an armed conflict, by taking such measures as they consider appropriate.

### Article 4

#### RESPECT FOR CULTURAL PROPERTY

1. The High Contracting Parties undertake to respect cultural property situated within their own territory as well as within the territory of other High Contracting Parties by refraining from any use

of the property and its immediate surroundings or of the appliances in use for its protection for purposes which are likely to expose it to destruction or damage in the event of armed conflict; and by refraining from any act of hostility directed against such property.

2. The obligations mentioned in paragraph 1 of the present article may be waived only in cases where military necessity imperatively requires such a waiver.

3. The High Contracting Parties further undertake to prohibit, prevent and, if necessary, put a stop to any form of theft, pillage or misappropriation of, and any acts of vandalism directed against, cultural property. They shall refrain from requisitioning movable cultural property situated in the territory of another High Contracting Party.

4. They shall refrain from any act directed by way of reprisals against cultural property.

5. No High Contracting Party may evade the obligations incumbent upon it under the present article, in respect of another High Contracting Party, by reason of the fact that the latter has not applied the measures of safeguard referred to in article 3.

### Article 5

#### OCCUPATION

1. Any High Contracting Party in occupation of the whole or part of the territory of another High Contracting Party shall as far as possible support the competent national authorities of the occupied country in safeguarding and preserving its cultural property.

2. Should it prove necessary to take measures to preserve cultural property situated in occupied territory and damaged by military operations, and should the competent national authorities be unable to take such measures, the occupying Power shall, as far as possible, and in close co-operation with such authorities, take the most necessary measures of preservation.

3. Any High Contracting Party whose government is considered their legitimate government by members of a resistance movement, shall, if possible, draw their attention to the obligation to comply with those provisions of the convention dealing with respect for cultural property.

### Article 6

#### DISTINCTIVE MARKING OF CULTURAL PROPERTY

In accordance with the provisions of article 16, cultural property may bear a distinctive emblem so as to facilitate its recognition.

### Article 7

#### MILITARY MEASURES

1. The High Contracting Parties undertake to introduce in time of peace into their military regula-

tions or instructions such provisions as may ensure observance of the present Convention, and to foster in the members of their armed forces a spirit of respect for the culture and cultural property of all peoples.

2. The High Contracting Parties undertake to plan or establish in peace-time, within their armed forces, services or specialist personnel, whose purpose will be to secure respect for cultural property and to co-operate with the civilian authorities responsible for safeguarding it.

## Chapter II

### SPECIAL PROTECTION

#### Article 8

##### GRANTING OF SPECIAL PROTECTION

1. There may be placed under special protection a limited number of refuges intended to shelter movable cultural property in the event of armed conflict, of centres containing monuments and other immovable cultural property of very great importance, provided that they:

(a) Are situated at an adequate distance from any large industrial centre or from any important military objective constituting a vulnerable point, such as, for example, an aerodrome, broadcasting station, establishment engaged upon work of national defence, a port or railway station of relative importance or a main line of communication;

(b) Are not used for military purposes.

2. A refuge for movable cultural property may also be placed under special protection, whatever its location, if it is so constructed that, in all probability, it will not be damaged by bombs.

3. A centre containing monuments shall be deemed to be used for military purposes whenever it is used for the movement of military personnel or material, even in transit. The same shall apply whenever activities directly connected with military operations, the stationing of military personnel, or the production of war material are carried on within the centre.

4. The guarding of cultural property mentioned in paragraph 1 above by armed custodians specially empowered to do so, or the presence, in the vicinity of such cultural property, of police forces normally responsible for the maintenance of public order shall not be deemed to be use for military purposes.

5. If any cultural property mentioned in paragraph 1 of the present article is situated near an important military objective as defined in the said paragraph, it may nevertheless be placed under special protection if the High Contracting Party asking for that protection undertakes, in the event of armed conflict, to make no use of the objective and particularly, in the case of a port, railway station or aerodrome, to

divert all traffic therefrom. In that event, such diversion shall be prepared in time of peace.

6. Special protection is granted to cultural property by its entry in the "International Register of Cultural Property under Special Protection". This entry shall only be made, in accordance with the provisions of the present convention and under the conditions provided for in the Regulations for the execution of the Convention.

#### Article 9

##### IMMUNITY OF CULTURAL PROPERTY UNDER SPECIAL PROTECTION

The High Contracting Parties undertake to ensure the immunity of cultural property under special protection by refraining, from the time of entry in the International Register, from any act of hostility directed against such property and, except for the cases provided for in paragraph 5 of article 8, from any use of such property or its surroundings for military purposes.

#### Article 10

##### IDENTIFICATION AND CONTROL

During an armed conflict, cultural property under special protection shall be marked with the distinctive emblem described in article 16, and shall be open to international control as provided for in the regulations for the execution of the Convention.

#### Article 11

##### WITHDRAWAL OF IMMUNITY

1. If one of the High Contracting Parties commits, in respect of any item of cultural property under special protection, a violation of the obligations under article 9, the opposing party shall, so long as this violation persists, be released from the obligation to ensure the immunity of the property concerned. Nevertheless, whenever possible, the latter party shall first request the cessation of such violation within a reasonable time.

2. Apart from the case provided for in paragraph 1 of the present article, immunity shall be withdrawn from cultural property under special protection only in exceptional cases of unavoidable military necessity, and only for such time as that necessity continues. Such necessity can be established only by the officer commanding a force the equivalent of a division in size or larger. Whenever circumstances permit, the opposing party shall be notified, a reasonable time in advance, of the decision to withdraw immunity.

3. The party withdrawing immunity shall, as soon as possible, so inform the Commissioner-General for cultural property provided for in the regulations for the execution of the Convention, in writing, stating the reasons.

**Chapter III****TRANSPORT OF CULTURAL PROPERTY***Article 12***TRANSPORT UNDER SPECIAL PROTECTION**

1. Transport exclusively engaged in the transfer of cultural property, whether within a territory or to another territory, may, at the request of the High Contracting Party concerned, take place under special protection in accordance with the conditions specified in the regulations for the execution of the Convention.

2. Transport under special protection shall take place under the international supervision provided for in the aforesaid regulations and shall display the distinctive emblem described in article 16.

3. The High Contracting Parties shall refrain from any act of hostility directed against transport under special protection.

*Article 13***TRANSPORT IN URGENT CASES**

1. If a High Contracting Party considers that the safety of certain cultural property requires its transfer and that the matter is of such urgency that the procedure laid down in article 12 cannot be followed, especially at the beginning of an armed conflict, the transport may display the distinctive emblem described in article 16, provided that an application for immunity referred to in article 12 has not already been made and refused. As far as possible, notification of transfer should be made to the opposing parties. Nevertheless, transport conveying cultural property to the territory of another country may not display the distinctive emblem unless immunity has been expressly granted to it.

2. The High Contracting Parties shall take, so far as possible, the necessary precautions to avoid acts of hostility directed against the transport described in paragraph 1 of the present article and displaying the distinctive emblem.

*Article 14***IMMUNITY FROM SEIZURE, CAPTURE AND PRIZE**

1. Immunity from seizure, placing in prize, or capture shall be granted to:

- (a) Cultural property enjoying the protection provided for in article 12 or that provided for in article 13;
- (b) The means of transport exclusively engaged in the transfer of such cultural property.

2. Nothing in the present article shall limit the right of visit and search.

**Chapter IV****PERSONNEL***Article 15***PERSONNEL**

As far as is consistent with the interests of security, personnel engaged in the protection of cultural property shall, in the interests of such property, be respected and, if they fall into the hands of the opposing party, shall be allowed to continue to carry out their duties whenever the cultural property for which they are responsible has also fallen into the hands of the opposing party.

**Chapter V****THE DISTINCTIVE EMBLEM***Article 16***EMBLEM OF THE CONVENTION**

1. The distinctive emblem of the Convention shall take the form of a shield, pointed below, per saltire blue and white (a shield consisting of a royal-blue square, one of the angles of which forms the point of the shield, and of a royal-blue triangle above the square, the space on either side being taken up by a white triangle).

2. The emblem shall be used alone, or repeated three times in a triangular formation, (one shield below), under the conditions provided for in article 17.

*Article 17***USE OF THE EMBLEM**

1. The distinctive emblem repeated three times may be used only as a means of identification of:

- (a) Immovable cultural property under special protection;
- (b) The transport of cultural property under the conditions provided for in articles 12 and 13;
- (c) Improvised refuges, under the conditions provided for in the regulations for the execution of the Convention.

2. The distinctive emblem may be used alone only as a means of identification of:

- (a) Cultural property not under special protection;
- (b) The persons responsible for the duties of control in accordance with the regulations for the execution of the Convention;
- (c) The personnel engaged in the protection of cultural property;
- (d) The identity cards mentioned in the Regulations for the execution of the Convention.

3. During an armed conflict, the use of the distinctive emblem in any other cases than those men-



tioned in the preceding paragraphs of the present article, and the use for any purpose whatever of a sign resembling the distinctive emblem, shall be forbidden.

4. The distinctive emblem may not be placed on any immovable cultural property unless at the same time there is displayed an authorization duly dated and signed by the competent authority of the High Contracting Party.

### Chapter VI

#### SCOPE OF APPLICATION OF THE CONVENTION

##### Article 18

##### APPLICATION OF THE CONVENTION

1. Apart from the provisions which shall take effect in time of peace, the present convention shall apply in the event of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one or more of them.

2. The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

3. If one of the Powers in conflict is not a party to the present convention, the Powers which are parties thereto shall nevertheless remain bound by it in their mutual relations. They shall furthermore be bound by the Convention, in relation to the said Power, if the latter has declared that it accepts the provisions thereof and so long as it applies them.

##### Article 19

##### CONFLICT NOT OF AN INTERNATIONAL CHARACTER

1. In the event of an armed conflict not of an international character occurring within the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply, as a minimum, the provisions of the present convention which relate to respect for cultural property.

2. The parties to the conflict shall endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present convention.

3. The United Nations Educational, Scientific and Cultural Organization may offer its services to the parties to the conflict.

### Chapter VII

#### EXECUTION OF THE CONVENTION

##### Article 20

##### REGULATIONS FOR THE EXECUTION OF THE CONVENTION

The procedure by which the present convention is to be applied is defined in the regulations for its execution, which constitutes an integral part thereof.

##### Article 21

##### PROTECTING POWERS

The present convention and the regulations for its execution shall be applied with the co-operation of the protecting Powers responsible for safeguarding the interests of the parties to the conflict.

##### Article 22

##### CONCILIATION PROCEDURE

1. The protecting Powers shall lend their good offices in all cases where they may deem it useful in the interests of cultural property, particularly if there is disagreement between the parties to the conflict as to the application or interpretation of the provisions of the present convention or the regulations for its execution.

2. For this purpose, each of the protecting Powers may, either at the invitation of one party, of the Director-General of the United Nations Educational, Scientific and Cultural Organization, or on its own initiative, propose to the parties to the conflict a meeting of their representatives, and in particular of the authorities responsible for the protection of cultural property, if considered appropriate on suitably chosen neutral territory. The parties to the conflict shall be bound to give effect to the proposals for meeting made to them. The protecting Powers shall propose for approval by the parties to the conflict a person belonging to a neutral Power or a person presented by the Director-General of the United Nations Educational, Scientific and Cultural Organization, which person shall be invited to take part in such a meeting in the capacity of chairman.

##### Article 23

##### ASSISTANCE OF UNESCO

1. The High Contracting Parties may call upon the United Nations Educational, Scientific and Cultural Organization for technical assistance in organizing the protection of their cultural property, or in connexion with any other problem arising out of the application of the present convention or the Regulations for its execution. The Organization shall accord such assistance within the limits fixed by its programme and by its resources.

2. The Organization is authorized to make, on its own initiative, proposals on this matter to the High Contracting Parties.

##### Article 24

##### SPECIAL AGREEMENTS

1. The High Contracting Parties may conclude special agreements for all matters concerning which they deem it suitable to make separate provision.

2. No special agreement may be concluded which would diminish the protection afforded by the present convention to cultural property and to the personnel engaged in its protection.

*Article 25*

## DISSEMINATION OF THE CONVENTION

The High Contracting Parties undertake, in time of peace as in time of armed conflict, to disseminate the text of the present convention and the regulations for its execution as widely as possible in their respective countries. They undertake, in particular, to include the study thereof in their programmes of military and, if possible, civilian training, so that its principles are made known to the whole population, especially the armed forces and personnel engaged in the protection of cultural property.

*Article 26*

## TRANSLATIONS, REPORTS

1. The High Contracting Parties shall communicate to one another, through the Director-General of the United Nations Educational, Scientific and Cultural Organization, the official translations of the present convention and of the regulations for its execution.

2. Furthermore, at least once every four years, they shall forward to the Director-General a report giving whatever information they think suitable concerning any measures being taken, prepared or contemplated by their respective administrations in fulfilment of the present convention and of the regulations for its execution.

*Article 27*

## MEETINGS

1. The Director-General of the United Nations Educational, Scientific and Cultural Organization may, with the approval of the Executive Board, convene meetings of representatives of the High Contracting Parties. He must convene such a meeting if at least one-fifth of the High Contracting Parties so request.

2. Without prejudice to any other functions which have been conferred on it by the present convention or the regulations for its execution, the purpose of the meeting will be to study problems concerning the application of the Convention and of the regulations for its execution, and to formulate recommendations in respect thereof.

3. The meeting may further undertake a revision of the Convention or the regulations for its execution if the majority of the High Contracting Parties are represented, and in accordance with the provisions of article 39.

*Article 28*

## SANCTIONS

The High Contracting Parties undertake to take, within the framework of their ordinary criminal jurisdiction, all necessary steps to prosecute and impose penal or disciplinary sanctions upon those persons, of whatever nationality, who commit or

order to be committed a breach of the present convention.

**Final Provisions***Article 29*

## LANGUAGES

1. The present convention is drawn up in English, French, Russian and Spanish, the four texts being equally authoritative.

2. The United Nations Educational, Scientific and Cultural Organization shall arrange for translations of the Convention into the other official languages of its General Conference.

*Article 30*

## SIGNATURE

The present convention shall bear the date of 14 May 1954 and, until the date of 31 December 1954, shall remain open for signature by all States invited to the Conference which met at The Hague from 21 April 1954 to 14 May 1954.

*Article 31*

## RATIFICATION

1. The present convention shall be subject to ratification by signatory States in accordance with their respective constitutional procedures.

2. The instruments of ratification shall be deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

*Article 32*

## ACCESSION

From the date of its entry into force, the present convention shall be open for accession by all States mentioned in article 30 which have not signed it, as well as any other State invited to accede by the Executive Board of the United Nations Educational, Scientific and Cultural Organization. Accession shall be effected by the deposit of an instrument of accession with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

*Article 33*

## ENTRY INTO FORCE

1. The present convention shall enter into force three months after five instruments of ratification have been deposited.

2. Thereafter, it shall enter into force, for each High Contracting Party, three months after the deposit of its instrument of ratification or accession.

3. The situations referred to in articles 18 and 19 shall give immediate effect to ratifications or accessions deposited by the parties to the conflict either before or after the beginning of hostilities or occupation. In such cases the Director-General of the United

Nations Educational, Scientific and Cultural Organization shall transmit the communications referred to in article 38 by the speediest method.

#### Article 34

##### EFFECTIVE APPLICATION

1. Each State party to the Convention on the date of its entry into force shall take all necessary measures to ensure its effective application within a period of six months after such entry into force.

2. This period shall be six months from the date of deposit of the instruments of ratification or accession for any State which deposits its instrument of ratification or accession after the date of the entry into force of the Convention.

#### Article 35

##### TERRITORIAL EXTENSION OF THE CONVENTION

Any High Contracting Party may, at the time of ratification or accession, or at any time thereafter, declare by notification addressed to the Director-General of the United Nations Educational, Scientific and Cultural Organization, that the present convention shall extend to all or any of the territories for whose international relations it is responsible. The said notification shall take effect three months after the date of its receipt.

#### Article 36

##### RELATIONS TO PREVIOUS CONVENTIONS

1. In the relations between Powers which are bound by the conventions of the Hague concerning the laws and customs of war on land (IV) and concerning naval bombardment in time of war (IX), whether those of 29 July 1899 or those of 18 October 1907, and which are parties to the present convention, this last convention shall be supplementary to the aforementioned convention (IX) and to the regulations annexed to the aforementioned convention (IV) and shall substitute for the emblem described in article 5 of the aforementioned convention (IX) the emblem described in article 16 of the present convention, in cases in which the present convention and the regulations for its execution provide for the use of this distinctive emblem.

2. In the relations between Powers which are bound by the Washington Pact of 15 April 1935 for the Protection of Artistic and Scientific Institutions and of Historic Monuments (Roerich Pact) and which are parties to the present convention, the latter convention shall be supplementary to the Roerich Pact and shall substitute for the distinguishing flag described in article III of the Pact the emblem defined in article 16 of the present convention, in cases in which the present convention and the regulations for its execution provide for the use of this distinctive emblem.

#### Article 37

##### DENUNCIATION

1. Each High Contracting Party may denounce the present Convention, on its own behalf, or on behalf of any territory for whose international relations it is responsible.

2. The denunciation shall be notified by an instrument in writing, deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

3. The denunciation shall take effect one year after the receipt of the instrument of denunciation. However, if, on the expiry of this period, the denouncing party is involved in an armed conflict, the denunciation shall not take effect until the end of hostilities, or until the operations of repatriating cultural property are completed, whichever is the later.

#### Article 38

##### NOTIFICATIONS

The Director-General of the United Nations Educational, Scientific and Cultural Organization shall inform the States referred to in articles 30 and 32, as well as the United Nations, of the deposit of all the instruments of ratification, accession or acceptance provided for in articles 31, 32 and 39 and of the notifications and denunciations provided for respectively in articles 35, 37 and 39.

#### Article 39

##### REVISION OF THE CONVENTION AND OF THE REGULATIONS FOR ITS EXECUTION

1. Any High Contracting Party may propose amendments to the present convention or the regulations for its execution. The text of any proposed amendment shall be communicated to the Director-General of the United Nations Educational, Scientific and Cultural Organization who shall transmit it to each High Contracting Party with the request that such party reply within four months stating whether it:

(a) Desires that a conference be convened to consider the proposed amendment;

(b) Favours the acceptance of the proposed amendment without a conference; or

(c) Favours the rejection of the proposed amendment without a conference.

2. The Director-General shall transmit the replies, received under paragraph 1 of the present article, to all High Contracting Parties.

3. If all the High Contracting Parties which have, within the prescribed time-limit, stated their views to the Director-General of the United Nations Educational, Scientific and Cultural Organization, pursuant to paragraph 1(b) of this article, inform him that they favour acceptance of the amendment without a conference, notification of their decision shall be made by the Director-General in accordance

with article 38. The amendment shall become effective for all the High Contracting Parties on the expiry of ninety days from the date of such notification.

4. The Director-General shall convene a conference of the High Contracting Parties to consider the proposed amendment if requested to do so by more than one-third of the High Contracting Parties.

5. Amendments to the Convention or to the regulations for its execution, dealt with under the provisions of the preceding paragraph, shall enter into force only after they have been unanimously adopted by the High Contracting Parties represented at the Conference and accepted by each of the High Contracting Parties.

6. Acceptance by the High Contracting Parties of amendments to the Convention or to the regulations for its execution, which have been adopted by the Conference mentioned in paragraphs 4 and 5, shall be effected by the deposit of a formal instrument with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

7. After the entry into force of amendments to the present convention or to the regulations for its

execution, only the text of the Convention or of the regulations for its execution thus amended shall remain open for ratification or accession.

#### Article 40

#### REGISTRATION

In accordance with article 102 of the Charter of the United Nations, the present convention shall be registered with the Secretariat of the United Nations at the request of the Director-General of the United Nations Educational, Scientific and Cultural Organization.

IN FAITH WHEREOF the undersigned, duly authorized, have signed the present convention.

DONE at The Hague, this fourteenth day of May, 1954, in a single copy which shall be deposited in the archives of the United Nations Educational, Scientific and Cultural Organization, and certified true copies of which shall be delivered to all the States referred to in articles 30 and 32, as well as to the United Nations.

## REGULATIONS FOR THE EXECUTION OF THE CONVENTION FOR THE PROTECTION OF CULTURAL PROPERTY IN THE EVENT OF ARMED CONFLICT

### SUMMARY

Reference is made to the regulations at various points in the Convention, specifically in articles 8 (6), 10, 11 (3), 12 (1) and (2), 17 (1) (c) and (2) (d), 20, 21, 22 (1), 23 (1), 25, 26 (1) and (2), 27 (2) and (3) and 39 (1) and (7). Article 20 of the Convention makes the regulations an integral part of the Convention.

Articles 1-10 of the regulations are headed "Control", articles 11-16 "Special Protection", articles 17-19 "Transport of Cultural Property" and articles 20-21 "The Distinctive Emblem".

On the entry into force of the Convention, the Director-General of UNESCO is to compile and keep up to date an international list of all persons nominated by the parties to the Convention as qualified to carry out the functions of a Commissioner-General for Cultural Property (article 1 of the regulations).

As soon as any party is engaged in an armed conflict to which article 18 of the Convention applies: (a) it is to appoint a representative for cultural property situated in its territory, and if it is in occupation of another territory it is to appoint a special representative for cultural property situated in that territory; (b) the protecting Power acting for each of the parties in conflict with the first-mentioned party is to appoint delegates accredited to the latter in conformity with article 3 of the regulations; and (c) a Commissioner-General for

Cultural Property is to be appointed to the party in accordance with article 4 of the regulations (article 2). The Commissioner-General is to be chosen from the international list by agreement between the party to which he will be accredited and the protecting Powers acting on behalf of the opposing parties, or, failing agreement, by the President of the International Court of Justice on the request of the Parties. The Commissioner-General may not take up his duties until his appointment has been approved by the party to which he will be accredited (article 4).

The delegates of protecting Powers are to investigate violations of the Convention, with the approval of the party to which they are accredited, and to make representations to secure their cessation. They are to keep the Commissioner-General informed of their activities (article 5). The functions of a Commissioner-General, to be exercised in conjunction with the representative of the party to which he is accredited and the delegates concerned, include the right to arrange or conduct investigations, with the agreement of the party, and to make representations to the parties involved in the conflict or their protecting Powers. If there is no protecting Power, he is to exercise the functions of a protecting Power laid down in articles 21 and 22 of the Convention (article 6). The Commissioners-General, delegates of protecting Powers, inspectors appointed by the Commissioners-

General and experts serving Commissioners-General, delegates or inspectors are to take account of the security needs of the party to which they are accredited and to act in accordance with the requirements of the military situation as indicated by that party (article 8). Article 10 of the regulations concerns the remuneration and expenses of Commissioners-General, inspectors, experts and delegates.

If, during an armed conflict, any party is induced by unforeseen circumstances to set up an improvised refuge and desires that it should be placed under special protection, it is to communicate this fact forthwith to the Commissioner-General accredited to that party. The Commissioner-General may thereupon authorize the party to display on the refuge the distinctive emblem defined in article 16 of the Convention. The delegates of the protecting Powers concerned are to be given an opportunity to order the withdrawal of the emblem. If they do not do so within thirty days, the Commissioner-General, if he finds that the conditions of article 8 of the Convention are observed, is to request the Director-General of UNESCO to enter the refuge in the Register of Cultural Property under Special Protection, maintained by the Director-General under articles 12, 15 and 16 of the regulations (article 11).

Article 13 of the regulations lays down the procedure whereby a party or occupying Power may submit to the Director-General an application for

the entry in the Register of certain refuges or other immovable cultural property, and article 14 the procedure for the making by another party of objections to such entry on the grounds that the property involved is not cultural property or does not comply with article 8 of the Convention. The procedure to be taken on receipt of such an objection is also laid down, and includes the possibility of arbitration, the alternative to which is a reference of the objection to the Parties to the Convention, which may confirm an objection to registration by a two-thirds majority of those voting. The vote is to be taken by correspondence unless the Director-General deems it essential to convene a meeting under article 27 of the Convention.

Article 17 of the Regulations provides that the request mentioned in article 12(1) of the Convention shall be addressed to the Commissioner-General. The information to be provided is laid down, and certain duties are entrusted to one or more inspectors to be appointed by the Commissioner-General, who are to accompany the property. Article 18 makes further provisions to govern transport to the territory of another country.

Article 20 of the regulations governs the affixing of the distinctive emblem and article 21 the identification of the persons mentioned in articles 17 (2)(b) and (c) of the Convention by armlets and identity cards, each bearing the distinctive emblem.

## PROTOCOL TO THE CONVENTION FOR THE PROTECTION OF CULTURAL PROPERTY IN THE EVENT OF ARMED CONFLICT

of 14 May 1954

*The High Contracting Parties* are agreed as follows:

### I

1. Each High Contracting Party undertakes to prevent the exportation, from a territory occupied by it during an armed conflict, of cultural property as defined in article 1 of the Convention for the Protection of Cultural Property in the Event of Armed Conflict signed at The Hague on 14 May 1954.

2. Each High Contracting Party undertakes to take into its custody cultural property imported into its territory either directly or indirectly from any occupied territory. This shall either be effected automatically upon the importation of the property or, failing this, at the request of the authorities of that territory.

3. Each High Contracting Party undertakes to return, at the close of hostilities, to the competent authorities of the territory previously occupied, cultural property which is in its territory, if such property has been exported in contravention of the principle laid down in the first paragraph. Such property shall never be retained as war reparations.

4. The High Contracting Party whose obligation

it was to prevent the exportation of cultural property from the territory occupied by it, shall pay an indemnity to the holders in good faith of any cultural property which has to be returned in accordance with the preceding paragraph.

### II

5. Cultural property coming from the territory of a High Contracting Party and deposited by it in the territory of another High Contracting Party for the purpose of protecting such property against the dangers of an armed conflict, shall be returned by the latter, at the end of hostilities, to the competent authorities of the territory from which it came.

### III

6. The present Protocol shall bear the date of 14 May 1954 and, until the date of 31 December 1954, shall remain open for signature by all States invited to the Conference which met at The Hague from 21 April 1954 to 14 May 1954.

7. (a) The present Protocol shall be subject to ratification by signatory States in accordance with their respective constitutional procedures.

(b) The instruments of ratification shall be deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

8. From the date of its entry into force, the present Protocol shall be open for accession by all States mentioned in paragraph 6 which have not signed it as well as any other State invited to accede by the Executive Board of the United Nations Educational, Scientific and Cultural Organization. Accession shall be effected by the deposit of an instrument of accession with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

9. The States referred to in paragraphs 6 and 8 may declare, at the time of signature, ratification or accession, that they will not be bound by the provision of section I or by those of section II of the present Protocol.

10. (a) The present Protocol shall enter into force three months after five instruments of ratification have been deposited.

(b) Thereafter, it shall enter into force, for each High Contracting Party, three months after the deposit of its instrument of ratification or accession.

(c) The situations referred to in articles 18 and 19 of the Convention for the Protection of Cultural Property in the Event of Armed Conflict, signed at The Hague on 14 May 1954, shall give immediate effect to ratifications and accessions deposited by the parties to the conflict either before or after the beginning of hostilities or occupation. In such cases, the Director-General of the United Nations Educational, Scientific and Cultural Organization shall transmit the communications referred to in paragraph 14 by the speediest method.

11. (a) Each State party to the protocol on the date of its entry into force shall take all necessary measures to ensure its effective application within a period of six months after such entry into force.

(b) This period shall be six months from the date of deposit of the instruments of ratification or accession for any State which deposits its instrument of ratification or accession after the date of the entry into force of the protocol.

12. Any High Contracting Party may, at the time of ratification or accession, or at any time thereafter, declare by notification addressed to the Director-General of the United Nations Educational, Scientific and Cultural Organization, that the present Protocol shall extend to all or any of the territories for whose international relations it is responsible. The said notification shall take effect three months after the date of its receipt.

13. (a) Each High Contracting Party may denounce the present protocol, on its own behalf, or on behalf of any territory for whose international relations it is responsible.

(b) The denunciation shall be notified by an

instrument in writing, deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

(c) The denunciation shall take effect one year after receipt of the instrument of denunciation. However, if, on the expiry of this period, the denouncing Party is involved in an armed conflict, the denunciation shall not take effect until the end of hostilities, or until the operations of repatriating cultural property are completed, whichever is the later.

14. The Director-General of the United Nations Educational, Scientific and Cultural Organization shall inform the States referred to in paragraphs 6 and 8, as well as the United Nations, of the deposit of all the instruments of ratification, accession or acceptance provided for in paragraphs 7, 8 and 15 and the notifications and denunciations provided for respectively in paragraphs 12 and 13.

15. (a) The present protocol may be revised if revision is requested by more than one-third of the High Contracting Parties.

(b) The Director-General of the United Nations Educational, Scientific and Cultural Organization shall convene a Conference for this purpose.

(c) Amendments to the present protocol shall enter into force only after they have been unanimously adopted by the High Contracting Parties represented at the Conference and accepted by each of the High Contracting Parties.

(d) Acceptance by the High Contracting Parties of amendments to the present Protocol, which have been adopted by the Conference mentioned in subparagraphs (b) and (c), shall be effected by the deposit of a formal instrument with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

(e) After the entry into force of amendments to the present protocol, only the text of the said protocol thus amended shall remain open for ratification or accession.

In accordance with Article 102 of the Charter of the United Nations, the present protocol shall be registered with the Secretariat of the United Nations at the request of the Director-General of the United Nations Educational, Scientific and Cultural Organization.

IN FAITH WHEREOF the undersigned, duly authorized, have signed the present protocol.

DONE at the The Hague, this fourteenth day of May 1954, in English, French, Russian and Spanish, the four texts being equally authoritative, in a single copy which shall be deposited in the archives of the United Nations Educational, Scientific and Cultural Organization, and certified true copies of which shall be delivered to all the States referred to in paragraphs 6 and 8 as well as to the United Nations.

RESOLUTIONS ADOPTED BY THE GENERAL CONFERENCE OF UNESCO  
at its eighth session, in Montevideo, Uruguay  
12 November – 10 December 1954

NOTE<sup>1</sup>

A number of resolutions adopted at the eighth session of the General Conference of UNESCO concerned the implementation of human rights falling within the competence of UNESCO.

The resolution relating to the work of the Intergovernmental Conference on the Protection of Cultural Property in the Event of Armed Conflict has already been referred to.<sup>2</sup>

In other resolutions, Member States were (i) invited to take measures, where necessary, for extending free and compulsory schooling, particularly at the primary stage, and for developing and improving school education in their metropolitan territories and in the Non-Self-Governing Territories under their jurisdiction, in accordance with the principles stated in article 26 of the Universal Declaration of Human Rights, due regard being had to the cultural individuality of each country or territory (resolution IV.1.1.211); (ii) invited to promote, throughout their national territory, in both state and private schools, teaching about human rights and fundamental freedoms in relation to the Constitutions of their respective countries and also to ensure that instruction is given about the rights set forth in the Universal Declaration of Human Rights; and to this end, to conduct a campaign of national and international civic education, in which schools and institutions concerned with out-of-school activities shall take part, in order to prepare all citizens for the exercise of the rights

and fulfilment of the duties laid down in the Universal Declaration (resolution IV.1.1.213); (iii) recommended to encourage respect for justice, for the rule of law, and for the human rights and fundamental freedoms which are affirmed by the United Nations Charter and the Unesco Constitution for the peoples of the world, without distinction of race, sex, language and religion; to direct their attention to gaining recognition for the ideas of living peacefully together, of understanding and co-operation among all nations, whatever their differences, while recognizing the principle of self-determination (resolution IV.1.3.4112), and to encourage the development of educational policies that will lead to effective realization of the aims mentioned above (resolution IV.1.3.4113); (iv) invited to make use of the social sciences in solving problems of discrimination and in the integration of minorities into the full social and cultural life of the community (resolution IV.1.3.421); and (v) called upon to eradicate in all possible ways the evil of discrimination, bearing in mind that discrimination, as enumerated in article 2 of the Universal Declaration of Human Rights, on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status is one of the greatest dangers to peace and to human dignity (resolution IV.1.3.423). The Director-General was authorized to aid in the solution of problems relating to discrimination on account of race, sex, religion and national origin, by assembling the necessary information and advising, at the request of Member States, on measures for the removal of such discrimination, and for the adoption of methods and techniques to promote the cultural assimilation of migrants (resolution IV.1.3.422).

<sup>1</sup> The complete text of these resolutions appears in *United Nations Educational, Scientific and Cultural Organization, Records of the General Conference, Eighth Session, Montevideo, 1954, Resolutions*, Paris, 1955.

<sup>2</sup> See p. 380 above.



## INTERNATIONAL COMMITTEE OF THE RED CROSS

### DEVELOPMENTS IN 1954 RELATING TO THE GENEVA CONVENTIONS OF 12 AUGUST 1949<sup>1</sup>

#### I. RATIFICATIONS OF CONVENTIONS

During 1954, the following States ratified the four Geneva Conventions: Turkey (10 February), Cuba (15 April), Union of Soviet Socialist Republics (10 May), Romania (1 June), Bulgaria (22 July), Byelorussian Soviet Socialist Republic (3 August), Hungary (3 August), Netherlands (3 August), Ukrainian Soviet Socialist Republic (3 August), Ecuador (11 August) and Poland (26 November). The following States acceded to the four Conventions: Liberia (29 March), the Federal Republic of Germany (3 September) and Thailand (29 December).

#### II. APPLICATION OF ARTICLE 3 OF THE CONVENTIONS TO POLITICAL DETAINEES

Article 3 of each of the four Geneva Conventions contains identical provisions to be applied "in the case of armed conflict not of an international character, occurring in the territory of one of the High Contracting Parties".<sup>2</sup> In 1953 a commission of experts considered the application of article 3 of the

Conventions to political detainees not explicitly covered by the Conventions, more particularly political detainees in countries engaged in civil war.<sup>3</sup>

The Geneva Conventions were ratified by Guatemala in May 1952. On being informed of events in Guatemala in June 1954, the International Committee of the Red Cross therefore felt able to offer its services, which were accepted. The Committee's work on behalf of political internees in Guatemala during July 1954 is described in its *Annual Report for 1954*, pp. 36-39 and 62.

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<sup>1</sup> This note is based on the *Annual Report for 1954* of the International Committee of the Red Cross, Geneva, 1955, and on other information received through the courtesy of Mr. Claude Pilloud, Deputy Director for General Affairs of the International Committee of the Red Cross, Geneva. See also *Tearbook on Human Rights for 1949*, pp. 299-309, *idem for 1950*, p. 417, *idem for 1951*, p. 489, *idem for 1952*, p. 408 and *idem for 1953*, p. 353.

<sup>2</sup> See *Tearbook on Human Rights for 1949*, pp. 299-300, 301 and 306.

<sup>3</sup> See *Tearbook on Human Rights for 1953*, p. 353.



## COUNCIL OF EUROPE

### THE CONVENTION AND PROTOCOL FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS<sup>1</sup>

#### *Entry into Force of the Convention*

The European Convention on Human Rights entered into force on 3 September 1953 on the deposit of the tenth instrument of ratification with the Secretary-General of the Council of Europe.<sup>2</sup> During 1954, two further ratifications were deposited, one by Turkey on 18 May 1954 and the other by the Netherlands on 31 August 1954. The Member States of the Council of Europe which have ratified the Convention are, in the order of deposit of their instruments of ratification: United Kingdom, Norway, Sweden, Federal Republic of Germany, the Saar, Ireland, Greece, Denmark, Iceland, Luxembourg, Turkey and the Netherlands. Only the ratifications of Belgium, France and Italy are outstanding.

#### *Entry into Force of the Protocol*

The Protocol to the Convention entered into force on 18 May 1954 when Turkey deposited the tenth instrument of ratification. This instrument contains the following reservation: "Article 2 of the Protocol shall be without prejudice to the provisions of Act No. 430 of 3 March 1924 concerning the unification of education." The Netherlands ratified the Protocol on 31 August 1954. Except for the Federal Republic of Germany, the countries which have ratified the Convention have also ratified the Protocol.

#### *Establishment of the European Commission on Human Rights*

The entry into force of the Convention resulted in the establishment of the European Commission of Human Rights provided for in article 19. The members of the Commission were elected in accordance with the provisions of article 21. The list of candidates put forward by the national groups in the Consultative Assembly was drawn up by the Bureau of the Assembly. In a letter dated 21 April 1954, the President of the Assembly transmitted this list to the Chairman of the Committee of Ministers. On 18 May 1954, at its fourteenth session, the Committee of Ministers proceeded to elect the members of the European Commission of Human Rights.

The following candidates were declared elected by an absolute majority:

Mrs. Geneviève Janssen-Pevtschin, Belgium  
Mrs. Ingeborg Hansen, Denmark

<sup>1</sup> Note prepared by Mr. P. Modinos, Head of the Human Rights Department, Secretariat-General of the Council of Europe.

<sup>2</sup> See *Tearbook on Human Rights for 1953*, p. 354.

Mr. Georges Pernot, France  
Mr. Adolf Süsterhenn, Federal Republic of Germany  
Mr. Constantin Th. Eustathiades, Greece  
Mr. Herman Jonasson, Iceland  
Mr. William B. Black, Ireland  
Mr. Francesco M. Dominedo, Italy  
Mr. Paul Faber, Luxembourg  
Mr. L. J. C. Beaufort, Netherlands  
Mr. Paal Berg, Norway  
Mrs. Irmgard Fuest, the Saar  
Mr. Sture Petren, Sweden  
Mr. Muvaffak Akbay, Turkey  
Mr. C. H. M. Waldoock, United Kingdom

In resolution (54) 9, the Committee of Ministers noted that the Governments of Belgium, France, Italy and the Netherlands had not deposited their instruments of ratification of the Convention on 18 May 1954 and declared that the election of the members of the Commission elected in respect of those countries would not become fully effective until the country in question had become a party to the Convention. The Committee of Ministers recommended, however, to the Commission that, pending their assumption of office, such members should participate, in a consultative capacity, in the preparatory work of the Commission and in drawing up its rules of procedure.

After the date of the election of the members of the Commission, the Committee of Ministers was called upon, at its fifteenth session held in Paris on 19 December, to elect a successor to Mrs. Ingeborg Hansen (Denmark) who had died. Mr. Max Sørensen was elected from the list put forward by the Bureau of the Assembly.

#### *First Session of the Commission*

The European Commission of Human Rights held its first session at Strasbourg from 12 to 17 July. An inaugural address was given by Mr. L. Marchal, Secretary-General of the Council of Europe. Messages were sent to the Commission by Dr. Adenauer, in his capacity as Chairman of the Committee of Ministers, and by the Standing Committee of the Consultative Assembly.

The Commission considered resolution (54) 9 of the Committee of Ministers concerning the position of members elected to the Commission from countries which had not yet deposited their instruments of

ratification of the Convention with the Secretary-General, and decided that the members so elected could take part in an advisory capacity, in the preparatory work of the Commission and in the framing of its rules of procedure.

The Commission considered the text of the Convention with a view to preparing appropriate rules of procedure and appointed a working party of five members to draft the rules of procedure.

The Commission elected Mr. P. Faber (Luxembourg) as Chairman pending the adoption of the rules of procedure.

#### *Competence of the European Commission of Human Rights*

Under article 24 of the Convention the Commission is competent to consider complaints lodged by one contracting party concerning an alleged breach of the Convention by another contracting party.

Article 25 makes provision for petitions to the Commission by individuals but the exercise of this right is subject to the following conditions: (a) the contracting party against which the complaint has been lodged must have declared that it recognizes the competence of the Commission to receive such petitions; and (b) at least six parties must have recognized the competence of the Commission.

The right of individual petition has so far been recognized only by Denmark (for a period of two years), Ireland and Sweden.

#### *European Court of Human Rights*

Article 19 of the Convention also provides for the setting up of a European court of human rights. However, the jurisdiction of the court, as defined in article 45, is subject, under article 46, to prior recognition by the parties. The court is not to be set up until the declarations of acceptance of its jurisdiction have reached a total of eight.

In addition to the declarations of acceptance previously deposited by Denmark and Ireland, a declaration of acceptance was deposited by the Netherlands, on 18 August 1954, for a period of five years and on condition of reciprocity.

#### *Contribution of the Consultative Assembly of the Council of Europe*

The Assembly, which had taken the initiative in

the preparation of the Convention in 1949, has since that time taken the closest interest in what must be considered as its own work. On the entry into force of the Convention in September 1953, the Assembly unanimously adopted recommendation 52 in which, *inter alia*, it recalled that it had "from the first, considered it essential for the protection of human rights that any person claiming to be the victim of a violation, by one of the High Contracting Parties, of his rights should be able to submit his complaint to an international organ direct, for the purpose of investigation and conciliation, without having to seek the support of a government whose intervention would have the effect of transforming the complaint of an individual into a dispute between States...".

The Consultative Assembly took up the matter again on 23 September 1954 and by 90 votes to 1, with 2 abstentions, adopted resolution No. 58 which runs as follows:

"The Assembly notes with regret that only Denmark, Ireland and Sweden have so far made the declaration, under article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms, recognizing the competence of the Commission of Human Rights to receive individual petitions, whereas at least six such declarations are required before the Commission can exercise that power even in respect of countries which have made the necessary declaration.

"The Assembly recalls that, if the protection of human rights is dependent on the initiative of governments, there is every reason to fear that this protection will remain a dead letter or that, on the rare occasions when a government takes any such initiative, there will be a suspicion that its action has been prompted by political motives, so that the hearing of a complaint will take on a similar character.

"The Assembly therefore urges the representatives from States which have not yet made the declaration specified in article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms to request their governments to reconsider their attitude on this question."

## ORGANIZATION OF AMERICAN STATES

### RESOLUTIONS OF THE TENTH INTER-AMERICAN CONFERENCE

Caracas, Venezuela, 1-28 March 1954<sup>1</sup>

The Ninth International Conference of American States, which met at Bogotá in 1948, in addition to adopting the American Declaration of the Rights and Duties of Man,<sup>2</sup> supplemented the Declaration by a recommendation that the Inter-American Juridical Committee prepare a draft statute providing for the creation and functioning of an inter-American court to guarantee the rights of man.<sup>3</sup> The Juridical Committee, however, after examining all aspects of the problem, came to the conclusion that it was not feasible to create a court when there was no body of substantive law to be applied by it; and the decision of the Committee was supported by the Inter-American Council of Jurists at its meeting at Rio de Janeiro in 1950.<sup>4</sup> In consequence, when the time came to prepare the agenda of the Tenth Conference, to be held at Caracas, the Council of the Organization of American States did not include the topic under the first heading, "Juridical-political matters." Later the Council decided to include the topic under the section on "Social matters". When the Conference itself met, the delegation of Uruguay presented two drafts, one of which, in modified form, became resolution XXVII, entitled "Strengthening of the System for the Protection of Human Rights", and the second, resolution XXIX, "Inter-American Court for the Protection of Human Rights".

In resolution XXVII, the Conference declared: "That it is the continuing desire of the American States that there may be a full exercise of fundamental human rights and duties, which can only be achieved under a system of representative democracy", and resolved:

"1. To reiterate the irrevocable adherence of the American States to the human rights agreed upon in the American Declaration of the Rights and Duties of Man and proclaimed in the Universal Declaration of Human Rights.

"2. To recommend to the American States that they adopt progressively measures to adjust their domestic legislation to the American Declaration of the Rights and Duties of Man and the Universal Declaration of Human Rights, and that, within the

limits of their sovereignty and in accordance with their respective constitutional provisions, they take appropriate measures to ensure the faithful observance of those rights.

"3. To suggest to the American republics that they promote the widest possible knowledge of fundamental human rights and duties, for the purpose of creating a strong civic conscience with respect to them and to the dignity of the human being.

"4. To request the American governments to take appropriate steps to foster the teaching in their schools and universities of the subject of fundamental human rights and duties and their significance, in accordance with the American and universal declarations.

"5. To recommend to the governments of America that they encourage the legitimate activities of any authentically democratic persons or groups who are working to spread the knowledge of such rights and duties, thereby strengthening their observance.

"6. To instruct the Pan-American Union:

"(a) To gather periodically from the member States such information as they may wish to furnish regarding the effect that they have been able to give to the provisions set forth in this resolution;

"(b) To effect periodically an exchange among the American States of the laws in effect in each of them, and of their jurisprudence relating to the recognition, respect, and exercise of fundamental human rights and duties;

"(c) To undertake studies in comparative law concerning the legislation and jurisprudence of the American States with respect to fundamental human rights, giving preference to those rights treating of freedom of expression; and

"(d) To contribute also on its own part to the spread of knowledge internationally of human rights and duties."

In resolution XXIX the Conference resolved: "That the Council of the Organization of American States should continue its studies on the jurisdictional aspects of the protection of human rights, on the basis of existing proposals and studies and in the light of its own experience, analysing the possibility of the creation of an inter-American court for the protection of human rights, in order that the matter be considered at the Eleventh Inter-American Conference."

<sup>1</sup> Note based upon texts and information kindly furnished by Professor Charles G. Fenwick, Director, Department of International Law, Pan-American Union, Washington, D.C. The resolutions appear in the Final Act of the Conference, published by the Pan-American Union in 1954.

<sup>2</sup> See *Tearbook on Human Rights for 1948*, pp. 440-442.

<sup>3</sup> See *ibid.*, p. 440.

<sup>4</sup> See *Tearbook on Human Rights for 1950*, pp. 427-428.

Resolution LVII of the Conference contains the revised Organic Statute of the Inter-American Commission of Women,<sup>1</sup> which includes the following provisions:

# CHAPTER I

## INTER-AMERICAN COMMISSION OF WOMEN

*Art. 1.* The Inter-American Commission of Women is an Inter-American specialized organization of a permanent nature, whose secretariat is attached to the general secretariat of the Organization of American States.

# CHAPTER II

## FUNCTIONS

*Art. 2.* The functions of the Inter-American Commission of Women are as follows:

(a) To work for the extension of civil, political, economic, and social rights to the women of America; to study their problems and propose means of solving them;

(b) To request the governments to carry out resolutions favourable to the solution of women's problems, approved by inter-American or international conferences and by its own assemblies;

(c) To serve as an advisory body to the Organization of American States and its organs in matters relating to the aims of the Commission;

(d) To establish close relations with inter-American organizations, and also with those of world-wide scope that are related to the objectives of the Commission;

(e) To send reports to the Council of the Organization of American States on the principal activities that have been carried on in connexion with the work of the Commission;

(f) To submit official reports to the Inter-American Conferences on the civil, political, social, and economic status of women in America and also on the problems which should, in its opinion, be considered, and to submit to those conferences resolutions which will promote their solution; and

(g) To send reports on these matters also to the governments of the member States.

Among other resolutions relating to the status of women, mention may be made of resolutions LXII and LXIII on economic rights of women and political rights of women respectively. In the latter, the Conference resolved: "To recommend to the gov-

ernments of the American republics that have not yet done so that they amend their laws for the purpose of granting full political rights to the women of their respective countries." In the former, the Conference resolved: "To recommend to the member States of the Organization of American States that have not yet done so that, as a matter of general policy and in accordance with their respective constitutional procedures:

(a) They devote special attention to the problems of working women, and include in their legislation the prohibition of wage differentials for equal work, because of sex or marital status;

(b) They ensure to men and women equal access to all kinds of apprenticeship and technical or vocational training;

(c) They adopt effective measures to protect industrial homework, in order to prevent exploitation in any form; and

(d) They recognize the right of working women to rest periods before and after childbirth, without prejudice to their employment or wages."

In resolution XCIV, on racial discrimination, the Conference recommended: "That the American States adopt or strengthen, wherever it is deemed necessary, legal and educational measures to make effective the abolition of racial discrimination, thus fulfilling the American concept of the rights of man and as one of the ways to fight international communism."

In resolution XXXI, on modernization of penal systems in the American countries, the Conference resolved: "To recommend to the American States that have not done so the establishment of penal systems that will have as their purpose the scientific treatment of prisoners, in order to achieve their moral rehabilitation and their readaptation to society."

In resolution XXVIII, entitled "Encouragement of the Development of Free Labor Unions", the Conference declared: "That it is the intention of the governments of the American States to continue to encourage the development of free and genuinely democratic labor unions."

In resolution XXX, on universal suffrage, the Conference resolved: "To pay tribute to the countries that have included in their legislation the right of suffrage for illiterates, thus seeking to broaden and strengthen the institutions of representative democracy."

Resolution VI, entitled "Campaign against Illiteracy", made recommendations relating to that campaign.

<sup>1</sup> For extracts from the previous text, see *Yearbook on Human Rights for 1948*, pp. 444-445.

## OTHER INSTRUMENTS

### FINAL DECLARATION OF THE GENEVA CONFERENCE ON INDOCHINA of 21 July 1954<sup>1</sup>

1. The Conference takes note of the agreements ending hostilities in Cambodia, Laos and Viet-Nam and organizing international control and the super-

vision of the execution of the provisions of these agreements.<sup>2</sup>

...

<sup>1</sup> English text appears as document No. 2 in Miscellaneous No. 20 (1954), Cmd. 9239, H.M. Stationery Office, London. Representatives of the following took part in the Conference: Cambodia, the Democratic Republic of Viet-Nam, France, Laos, the People's Republic of China, the State of Viet-Nam, the Union of Soviet Socialist Republics, the United Kingdom and the United States of America.

<sup>2</sup> The three agreements on the cessation of hostilities were each signed in Geneva on 20 June 1954. English translations appear as documents Nos. 3, 4 and 5 respectively in Miscellaneous No. 20 (1954), Cmd. 9239, H.M. Stationery Office, London.

The Agreement on the Cessation of Hostilities in Cambodia was signed by the representatives of the Khmer National Armed Forces and the Democratic Republic of Viet-Nam. It includes the following provisions:

#### "CHAPTER III

#### OTHER QUESTIONS

##### A. *The Khmer Armed Forces, Natives of Cambodia*

"Art. 5. The two parties shall undertake that within thirty days after the cease-fire order has been proclaimed, the Khmer Resistance Forces shall be demobilized on the spot; simultaneously, the troops of the Royal Khmer Army shall abstain from taking any hostile action against the Khmer Resistance Forces.

"Art. 6. The situation of these nationals shall be decided in the light of the declaration made by the Delegation of Cambodia at the Geneva Conference, reading as follows:

"*The Royal Government of Cambodia,*

"*In the desire to ensure harmony and agreement among the peoples of the kingdom,*

"*Declares itself resolved to take the necessary measures to integrate all citizens, without discrimination, into the national community and to guarantee them the enjoyment of the rights and freedoms for which the Constitution of the kingdom provides;*

"*Affirms that all Cambodian citizens may freely participate as electors or candidates in general elections by secret ballot.*

"*No reprisals shall be taken against the said nationals or their families, each national being entitled to the enjoyment, without any discrimination as compared with other nationals, of all constitutional guarantees concerning the protection of person and property and democratic freedoms.*

"*Applicants therefor may be accepted for service in the Regular Army or local police formations if they satisfy the conditions required for current recruitment of the Army and Police Corps.*

"*The same procedure shall apply to those persons who have returned to civilian life and who may apply for civilian employment on the same terms as other nationals.*

...

"Art. 10. Responsibility for the execution of the Agree-

ment on the cessation of hostilities shall rest with the parties.

"Art. 11. An international commission shall be responsible for control and supervision of the application of the provisions of the Agreement on the cessation of hostilities in Cambodia..."

...

For the provisions of the Constitution of Cambodia referred to above, reference should be made to *Tearbook on Human Rights for 1950*, pp. 35-36.

The Agreement on the Cessation of Hostilities in Laos was signed by the representatives of the forces of the French Union in Indo-China and the Democratic Republic of Viet-Nam, and includes the following provisions:

"Art. 15. Each party undertakes to refrain from any reprisals or discrimination against persons or organizations for their activities during the hostilities and also undertakes to guarantee their democratic freedoms.

...

"Art. 24. Responsibility for the execution of the Agreement on the cessation of hostilities shall rest with the parties.

"Art. 25. An international commission shall be responsible for control and supervision of the application of the provisions of the Agreement on the cessation of hostilities in Laos..."

The Agreement on the Cessation of Hostilities in Viet-Nam was signed by the representatives of the Democratic Republic of Viet-Nam and the State of Viet-Nam, the French and Vietnamese texts being equally authentic. The Agreement includes the following provisions:

"Art. 14. Political and administrative measures in the two regrouping zones, on either side of the provisional military demarcation line:

...

(c) Each party undertakes to refrain from any reprisals or discrimination against persons or organizations on account of their activities during the hostilities and to guarantee their democratic liberties.

(d) From the date of entry into force of the present Agreement until the movement of troops is completed, any civilians residing in a district controlled by one party who wish to go and live in the zone assigned to the other party shall be permitted and helped to do so by the authorities in that district.

"Art. 15.

...

(d) The two parties shall permit no destruction or sabotage of any public property and no injury to the life and property of the civil population. They shall permit no interference in local civil administration.

...

"Art. 28. Responsibility for the execution of the agreement on the cessation of hostilities shall rest with the parties.

"Art. 29. An international commission shall ensure the control and supervision of this execution."

3. The Conference takes note of the declarations made by the Governments of Cambodia and of Laos of their intention to adopt measures permitting all citizens to take their place in the national community, in particular by participating in the next general elections, which, in conformity with the constitution of each of these countries, shall take place in the course of the year 1955, by secret ballot and in conditions of respect for fundamental freedoms.

...

7. The Conference declares that, so far as Viet-Nam is concerned, the settlement of political problems, effected on the basis of respect for the principles of independence, unity and territorial integrity, shall permit the Vietnamese people to enjoy the fundamental freedoms, guaranteed by democratic institutions established as a result of free general elections by secret ballot. In order to ensure that sufficient progress in the restoration of peace has been made, and that all the necessary conditions obtain for free expression of the national will, general elections shall be held

in July 1956, under the supervision of an international commission composed of representatives of the member States of the International Supervisory Commission, referred to in the agreement on the cessation of hostilities. Consultations will be held on this subject between the competent representative authorities of the two zones from 20 July 1955, onwards.

8. The provisions of the agreements on the cessation of hostilities intended to ensure the protection of individuals and of property must be most strictly applied and must, in particular, allow everyone in Viet-Nam to decide freely in which zone he wishes to live.

9. The competent representative authorities of the northern and southern zones of Viet-Nam, as well as the authorities of Laos and Cambodia, must not permit any individual or collective reprisals against persons who have collaborated in any way with one of the parties during the war, or against members of such persons' families.

...

## SOUTHEAST ASIA COLLECTIVE DEFENCE TREATY

done at Manila, 8 September 1954<sup>1</sup>

*The parties to this Treaty,*

*Recognizing* the sovereign equality of all the parties,

*Reiterating* their faith in the purposes and principles set forth in the Charter of the United Nations and their desire to live in peace with all peoples and all governments,

*Reaffirming* that, in accordance with the Charter of the United Nations, they uphold the principle of equal rights and self-determination of peoples, and declaring that they will earnestly strive by every peaceful means to promote self-government and to

secure the independence of all countries whose peoples desire it and are able to undertake its responsibilities,

*Desiring* to strengthen the fabric of peace and freedom and to uphold the principles of democracy, individual liberty and the rule of law, and to promote the economic well-being and development of all peoples in the treaty area,

...

*Art. III.* The parties undertake to strengthen their free institutions and to co-operate with one another in the further development of economic measures, including technical assistance, designed both to promote economic progress and social well-being and to further the individual and collective efforts of governments toward these ends.

...

<sup>1</sup> English text in Miscellaneous No. 27 (1954), Cmd. 9282, H.M. Stationery Office, London, October 1954. Australia, France, New Zealand, Pakistan, the Philippines, Thailand, the United Kingdom of Great Britain and Northern Ireland and the United States of America were signatories to this Treaty.

## PACIFIC CHARTER

proclaimed at Manila, 8 September 1954<sup>1</sup>

*The delegates of Australia, France, New Zealand, Pakistan, the Republic of the Philippines, the Kingdom of Thailand, the United Kingdom of Great Britain and Northern Ireland, and the United States of America,*

*Desiring* to establish a firm basis for common action to maintain peace and security in South-east Asia and the South-west Pacific;

*Convinced* that common action to this end, in order

to be worthy and effective, must be inspired by the highest principles of justice and liberty;

DO HEREBY PROCLAIM:

First, in accordance with the provisions of the United Nations Charter, they uphold the principle of equal rights and self-determination of peoples and they will earnestly strive by every peaceful means to promote self-government and to secure the independence of all countries whose peoples desire it and are able to undertake its responsibilities;

<sup>1</sup> English text in Miscellaneous No. 31 (1954), Cmd. 9299, H.M. Stationery Office, London, October 1954.

Second, they are each prepared to continue taking effective practical measures to ensure conditions favourable to the orderly achievement of the foregoing purposes in accordance with their constitutional processes;

Third, they will continue to co-operate in the economic, social and cultural fields in order to promote higher living standards, economic progress and social well-being in this region;

...

## MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENTS OF ITALY, THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, THE UNITED STATES OF AMERICA AND YUGOSLAVIA REGARDING THE FREE TERRITORY OF TRIESTE

Initialed in London, 5 October 1954<sup>1</sup>

[Paragraph 1 of the Memorandum of Understanding makes a brief reference to the historical background of the Memorandum and concludes by stating that the four governments concerned "have agreed upon the following practical arrangements". Paragraph 2 provides for the extension by the Italian and Yugoslav governments of their civil administration over the areas for which they are to have responsibility. Boundary arrangements are governed by paragraph 3, which makes reference to the map contained in annex I to the Memorandum.]

4. The Italian and Yugoslav Governments agree to enforce the special statute contained in annex II.

[Paragraph 5 relates to the Free Port at Trieste.]

6. The Italian and Yugoslav Governments agree that they will not undertake any legal or administrative action to prosecute or discriminate against the person or property of any resident of the areas coming under their civil administration in accordance with this memorandum of understanding for past political activities in connexion with the solution of the problem of the Free Territory of Trieste.

[In paragraph 7 the Italian and Yugoslav Governments agree to negotiate with a view to concluding an agreement regulating local border traffic. Pending the conclusion of that agreement the competent authorities are to take appropriate measures to facilitate such traffic.]

8. For a period of one year from the date of the initialling of this memorandum of understanding, persons formerly resident [pertinenti — zavicajni] in the areas coming under the civil administration either of Italy or of Yugoslavia shall be free to return immediately thereto. Any person so returning, as also any such who have already returned, shall enjoy the same rights as the other residents of these areas. Their properties and assets shall be at their disposal in accordance with existing law, unless disposed of by them in the meantime. For a period of two years from the date of the initialling of this memorandum of understanding, persons formerly resident in either of these areas and who do not intend to return thereto,

and persons presently resident in either area who decide within one year from the date of the initialling of this memorandum of understanding to give up such residence, shall be permitted to remove their movable property and transfer their funds. No export or import duties or any other tax will be imposed in connexion with the moving of such property. Persons wherever resident who decide to sell their movable and immovable property within two years from the date of the initialling of this memorandum of understanding will have the sums realized from the sale of such property deposited in special accounts with the national banks of Italy or Yugoslavia. Any balance between these two accounts will be liquidated by the two governments at the end of the two-year period. Without prejudice to the immediate implementation of the provisions of this paragraph, the Italian and Yugoslav Governments undertake to conclude a detailed agreement within six months of the date of the initialling of this memorandum of understanding.

[Paragraph 9 concerns the communication of the Memorandum to the Security Council of the United Nations.]

...

### Annex II

#### SPECIAL STATUTE

Whereas it is the common intention of the Italian and Yugoslav Governments to ensure human rights and fundamental freedoms without discrimination of race, sex, language and religion in the areas coming under their administration under the terms of the present memorandum of understanding, it is agreed:

*Art. I.* In the administration of their respective areas, the Italian and Yugoslav authorities shall act in accordance with the principles of the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations on 10 December 1948, so that all inhabitants of the two areas without discrimination may fully enjoy the fundamental rights and freedoms laid down in the aforesaid Declaration.

*Art. II.* The members of the Yugoslav ethnic group in the area administered by Italy and the members of the Italian ethnic group in the area administered by Yugoslavia shall enjoy equality of rights and treatment with the other inhabitants of the two areas.

<sup>1</sup> The full text of the Memorandum of Understanding, together with its two Annexes, appears in United Nations document S/3301 and Add. 1, which is included in *United Nations Security Council, Official Records, Ninth Year. Supplement, October, November and December 1954*. New York, 1955.



This equality implies that they shall enjoy:

(a) Equality with other citizens regarding political and civil rights, as well as other human rights and fundamental freedoms guaranteed by article I;

(b) Equal rights in acquiring or performing any public services, functions, professions and honours;

(c) Equality of access to public and administrative office; in this regard the Italian and Yugoslav administrations will be guided by the principle of facilitating for the Yugoslav ethnic group and for the Italian ethnic group, respectively, under their administration a fair representation in administrative positions, and especially in those fields, such as the inspectorate of schools, where the interests of such inhabitants are particularly involved;

(d) Equality of treatment in following their trade or profession in agriculture, commerce, industry or any other field, and in organizing and operating economic associations and organizations for this purpose. Such equality of treatment shall concern also taxation. In this regard persons now engaged in a trade or profession who do not possess the requisite diploma or certificate for carrying on such activities shall have four years from the date of the initialling of the present memorandum of understanding within which to acquire the necessary diploma or certificate. They will not be prevented from exercising their trade or profession because of failure to have the requisite documents unless they have failed to acquire them within the aforementioned four-year period;

(e) Equality of treatment in the use of languages as defined in article V below;

(f) Equality with other citizens in the general field of social assistance and pensions (sickness benefits, old age and disability pensions, including disabilities resulting from war, and pensions to the dependants of those killed in war).

*Art. III.* Incitement to national and racial hatred in the two areas is forbidden, and any such act shall be punished.

*Art. IV.* The ethnic character and the unhampered cultural development of the Yugoslav ethnic group in the Italian-administered area and of the Italian ethnic group in the Yugoslav-administered area shall be safeguarded.

(a) They shall enjoy the right to their own press in their mother tongue;

(b) The educational, cultural, social and sports organizations of both groups shall be free to function in accordance with the existing laws. Such organizations shall be granted the same treatment as those accorded to other corresponding organizations in their respective areas, especially as regards the use of public buildings and radio and assistance from public financial means; and the Italian and Yugoslav authorities will endeavour to ensure to such organizations the continued use of the facilities they now enjoy, or of comparable facilities;

(c) Kindergarten, primary, secondary and professional school teaching in the mother tongue shall be accorded to both groups. Such schools shall be maintained in all localities in the Italian-administered area where there are children members of the Yugoslav ethnic group, and in all localities in the Yugoslav-administered area where there are children members of the Italian ethnic group. The Italian and Yugoslav Governments agree to maintain the existing schools as set out in the list attached hereto<sup>1</sup> for the ethnic groups in the area under their administration and will consult in the mixed committee provided for

in the final article of this statute before closing any of these schools.

Such schools shall enjoy equality of treatment with other schools of the same type in the area administered, respectively, by Italy and Yugoslavia, as regards provision of textbooks, buildings and other material means, the number and position of teachers and the recognition of diplomas. The Italian and Yugoslav authorities shall endeavour to ensure that the teaching in such schools is performed by teachers of the same mother tongue as the pupils.

The Italian and Yugoslav authorities will promptly introduce whatever legal prescriptions may be necessary so that the permanent organization of such schools may be regulated in accordance with the foregoing provisions. Italian-speaking teachers who on the date of the initialling of the present memorandum of understanding are employed as teachers in the educational system of the Yugoslav-administered area, and Slovene-speaking teachers who on the said date are employed as teachers in the educational system of the Italian-administered area, shall not be dismissed from their positions for the reason that they do not possess the requisite teaching diploma. This extraordinary provision shall not be used as a precedent or be claimed to apply to any cases other than the categories specified above. Within the framework of their existing laws, the Yugoslav and Italian authorities will take all reasonable measures to give the aforementioned teachers an opportunity as provided in article II(d) above, to qualify for the same status as regular members of the teaching staff.

The educational programmes of such schools must not be directed at interfering with the national character of the pupils.

*Art. V.* Members of the Yugoslav ethnic group in the area administered by Italy and members of the Italian ethnic group in the area administered by Yugoslavia shall be free to use their language in their personal and official relations with the administrative and judicial authorities of the two areas. They shall have the right to receive from the authorities a reply in the same language; in verbal replies, either directly or through an interpreter; in correspondence, a translation of the replies at least is to be provided by the authorities.

Public documents concerning members of these ethnic groups, including court sentences, shall be accompanied by a translation in the appropriate language. The same shall apply to official announcements, public proclamations and publications.

In the area under Italian administration, inscriptions on public institutions and the names of localities and streets shall be in the language of the Yugoslav ethnic group as well as in the language of the administering authority in those electoral districts of the Commune of Trieste and in those other communes where the members of that ethnic group constitute a significant element (at least one-quarter) of the population; in those communes in the area under Yugoslav administration where the members of the Italian ethnic group are a significant element (at least one-quarter) of the population such inscriptions and names shall be in Italian as well as in the language of the administering authority.

*Art. VI.* The economic development of the Yugoslav ethnic population in the Italian-administered area and of

<sup>1</sup> This "List of Existing Schools" is not here reproduced.



the Italian ethnic population in the Yugoslav-administered area shall be secured without discrimination and with a fair distribution of the available financial means.

*Art. VII.* No change should be made in the boundaries of the basic administrative units in the areas which come under the civilian administration of Italy or Yugoslavia with a view to prejudicing the ethnic composition of the units concerned.

*Art. VIII.* A special mixed Yugoslav-Italian committee shall be established for the purpose of assistance and consultation concerning problems relating to the protection of the Yugoslav ethnic group in the area under Italian

administration and of the Italian ethnic group in the area under Yugoslav administration. The committee shall also examine complaints and questions raised by individuals belonging to the respective ethnic groups concerning the implementation of this Statute.

The Yugoslav and Italian Governments shall facilitate visits by the committee to the area under their administration and grant it every facility for carrying out its responsibilities.

Both governments undertake to negotiate forthwith detailed regulations governing the functioning of the committee.

## AGREEMENT BETWEEN DENMARK, FINLAND, NORWAY AND SWEDEN ON A COMMON LABOUR MARKET AND PROTOCOL THERETO of 22 May 1954

### NOTE<sup>1</sup>

On 22 May 1954 an agreement on a common labour market was signed by representatives of the Governments of Denmark, Finland, Norway and Sweden. After deposit of the instruments of ratification, the agreement came into force on 2 July 1954.

Article 1 provides as follows: "In the countries parties to the agreement no permit of employment shall be required for nationals of any other country party to the agreement."

A protocol to the agreement provides that this general rule shall apply only to employees and not to persons independently engaged in trades or professions. It is further provided that the agreement shall not prejudice the right of the contracting parties to impose special conditions upon the employment of foreigners by concessionary enterprises or in

professions subject to special authorization; nor shall it prejudice the right of each party to reserve for its own nationals employment in works undertaken with public support, or the right of each party to prescribe special conditions for employment in fields where special considerations of security and defence apply.

Other articles of the agreement envisage co-operation between national authorities of the contracting parties for the exchange of information concerning employment opportunities and the placement of labour through the public labour exchanges of the contracting parties.

A protocol which was signed on 22 May 1954 by representatives of the same countries and which came into force on 1 July 1954, exempts nationals of the contracting parties from the duty of possessing a passport and of obtaining a permit of residence when staying in any other of the contracting countries.

<sup>1</sup> This note was prepared by Professor Max Sørensen, University of Aarhus.

## INDO-CEYLON AGREEMENT of 18 January 1954<sup>1</sup>

The Prime Ministers of Ceylon and India, accompanied by some of their colleagues, met in conference in New Delhi on 16, 17 and 18 January 1954, and considered fully the problems of people of Indian origin in Ceylon. As a result of these discussions, certain proposals were framed by them, which will now be placed before their respective governments.<sup>2</sup>

These proposals are:

### *Illicit Immigration*

...

<sup>1</sup> Text as circulated by the Press Information Bureau of the Government of India.

<sup>2</sup> The agreement was ratified by the two governments concerned on 13 February 1954.

### *Citizenship*

4. The registration of citizens under the Indian and Pakistani (Citizenship) Act<sup>3</sup> will be expedited and every endeavour will be made to complete the disposal of pending applications within two years.

5. All persons registered under this Act may be placed by the Government of Ceylon on a separate electoral register, particularly in view of the fact that the bulk of the citizens do not speak the language of the area in which they reside. This arrangement will last for a period of only 10 years. The Government of Ceylon agree that in certain constituencies where the number of registered citizen voters is not likely

<sup>3</sup> See p. 47, footnote 2, above.

to exceed 250, they shall be put on the national register.

6. Citizens whose names are placed in the separate electoral register will be entitled to elect a certain number of members to the House of Representatives, the number being determined after consultation with the Prime Minister of India. The Government of Ceylon expect to complete their action in this respect before the present Parliament is dissolved in 1957.

7. In regard to those persons who are not so registered, it would be open to them to register themselves as Indian citizens, if they so choose, at the office of the Indian High Commissioner in accor-

dance with the provisions of article 8 of the Constitution of India.<sup>1</sup> It is noted that Ceylon proposes to offer special inducements to encourage such registration and that these inducements will be announced from time to time. The Government of India will offer administrative and similar facilities to all persons of Indian origin to register themselves as Indian citizens under the Constitution of India, if they so choose, and will also give publicity to the availability of such facilities.

...

<sup>1</sup> The text of article 8 of the Constitution appears in *Yearbook on Human Rights for 1949*, p. 100.

## AGREEMENT BETWEEN THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY AND THE GOVERNMENT OF THE FRENCH REPUBLIC ON THE STATUTE OF THE SAAR<sup>1</sup>

Signed at Paris, on 23 October 1954

### EXTRACTS

*The Government of the Federal Republic of Germany,*

*The Government of the French Republic*, after consulting the Saar Government, and obtaining its agreement,

*Being desirous* of allowing the broadest possible scope to the economic development of the Saar and of eliminating every source of conflict between them,

HAVE AGREED on the following principles, which will serve as a basis for a solution of the Saar problem.

...

#### VI

Political parties, associations, newspapers and public gatherings shall not be subject to licence. If the statute is approved by referendum, it shall not be re-examined until the conclusion of a peace treaty.

<sup>1</sup> The text of this agreement appears in *Notes et études documentaires*, published by the French Ministry of Foreign Affairs, Paris, No. 1951, 23 November 1954. Translation by the United Nations Secretariat.

Any intervention from outside designed to influence public opinion in the Saar, particularly in the form of aid or support to political parties, associations or the press, shall be prohibited.

#### VII

If the people of the Saar by referendum accept the present statute, the following obligations will devolve upon the Saar:

(a) The Saar Government shall comply with the provisions of the statute;

(b) All steps shall be taken to ensure that the amendments in the Saar Constitution made necessary by acceptance of the European statute are made by the constitutional organs of the Saar;

(c) The Saar Government shall, within three months after the referendum, make arrangements for the election of a new Diet.

...

PART IV

**THE UNITED NATIONS  
AND HUMAN RIGHTS**

# THE UNITED NATIONS AND HUMAN RIGHTS<sup>1</sup>

## 1. UNIVERSAL DECLARATION OF HUMAN RIGHTS

During 1954 the Universal Declaration of Human Rights, the text of which was published in the *Tearbook on Human Rights for 1948*,<sup>2</sup> continued to provide a basis for action on the part of organs of the United Nations.

In resolution 820 (IX), the General Assembly recalled that its Commission on the Racial Situation in the Union of South Africa had concluded that the racial policies of the Government of the Union of South Africa were contrary to the United Nations Charter and to the Universal Declaration.<sup>3</sup>

In resolution 843 (IX), the General Assembly found that, in certain areas of the world, women were subject to customs, ancient laws and practices relating to marriage and the family which were inconsistent with the principles set forth in the Charter and the Universal Declaration. It recommended, *inter alia*, efforts to inform public opinion in those areas concerning the Universal Declaration.<sup>4</sup>

Resolution 547 H (XVIII), previously adopted by the Economic and Social Council on the same subject, contained similar references to the Universal Declaration.

The Economic and Social Council in resolution

545 C (XVIII) invited the International Labour Organisation to undertake a study of discrimination in the field of employment and occupation, to be carried out on a global basis in accordance with article 2, paragraph 2, of the Universal Declaration.<sup>5</sup>

In resolution 545 D (XVIII) the Council, recalling the contents of article 13 of the Universal Declaration, requested the Sub-Commission on Prevention of Discrimination and Protection of Minorities to take, as the objective of its study of discrimination in relation to "emigration, immigration, and travel", article 13, paragraph 2 of the Universal Declaration—namely, the right of everyone to "leave any country, including his own, and to return to his country".<sup>6</sup>

The preamble to the draft convention on the nationality of married women which was transmitted by the Council in resolution 547 C (XVIII) to Member States for their observations, and to the International Law Commission for its information,<sup>7</sup> recognized that in article 15 of the Universal Declaration of Human Rights the General Assembly of the United Nations had proclaimed that "everyone has the right to a nationality", and that "no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality".<sup>8</sup>

In resolution 547 I (XVIII) the Council expressed its belief that the statutory matrimonial regimes in many countries were incompatible with the equality of spouses during marriage and at its dissolution proclaimed in the Universal Declaration.<sup>9</sup>

The Council in resolution 547 J (XVIII) expressed the belief that the limitation of the legal capacity and property rights of married women dealt with in the resolution was incompatible with the principle of equality of spouses during marriage as proclaimed in the Universal Declaration.<sup>9</sup>

The Council's resolution 547 K (XVIII) recommended that all States should ensure women equal access with men to all types of education, without any of the distinctions mentioned in article 2 of the Universal Declaration.<sup>10</sup>

<sup>1</sup> This report on the work of the United Nations in relation to human rights contains an account only of the most significant developments during 1954. More details on most topics are to be found in the relevant parts of *Report of the Economic and Social Council covering the period from 6 August 1953 to 6 August 1954* (General Assembly, Official Records, Ninth Session, Supplement No. 3 (A/2686)), and *Report of the Economic and Social Council covering the period from 7 August 1954 to 5 August 1955* (General Assembly, Official Records, Tenth Session, Supplement No. 3 (A/2943)). On other matters, see further *Annual Report of the Secretary-General on the Work of the Organization, 1 July 1953-30 June 1954* (General Assembly, Official Records, Ninth Session, Supplement No. 1 (A/2663)) and *Annual Report of the Secretary-General on the Work of the Organization, 1 July 1954-15 June 1955* (General Assembly, Official Records, Tenth Session, Supplement No. 1 (A/2911)).

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

Resolutions of the General Assembly, the Economic and Social Council and the Trusteeship Council are identified by arabic numerals followed by roman numerals in parentheses. The roman numerals indicate the session of the body at which the resolution was adopted.

<sup>2</sup> Pages 466-468.

<sup>3</sup> See p. 417.

<sup>4</sup> See p. 409.

<sup>5</sup> See p. 408.

<sup>6</sup> See p. 408.

<sup>7</sup> See p. 409.

<sup>8</sup> See p. 409.

<sup>9</sup> See p. 409.

<sup>10</sup> See p. 409.

## 2. DRAFT INTERNATIONAL COVENANTS ON HUMAN RIGHTS

The Commission on Human Rights, at its tenth session, 23 February–16 April 1954, considered the draft international covenants on human rights and measures of implementation in the light of the instructions of the General Assembly and the Economic and Social Council and on the basis of the drafts prepared at its previous sessions.<sup>1</sup>

At this session<sup>2</sup> the Commission drafted the following provisions, thereby completing its work on the draft covenants: articles relating to a system of periodic reports for the implementation of the draft covenant on economic, social and cultural rights based on the articles drafted at the seventh session; an article concerning reporting for the draft covenant on civil and political rights; an article for both draft covenants concerning the respective responsibilities of the United Nations and the specialized agencies; and articles relating to final clauses for both draft covenants, including a new article relating to federal States and the text of the territorial application clause adopted by the General Assembly in its resolution 422(V).<sup>3</sup> These articles read as follows:<sup>4</sup>

### DRAFT COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

...

#### PART IV

*Art. 17.* 1. The States parties to this covenant undertake to submit in conformity with this part of the Covenant reports concerning the progress made in achieving the observance of the rights recognized herein.

2. (a) All reports shall be submitted to the Secretary-General of the United Nations for the Economic and Social Council;

(b) Any State party which is also a member of a specialized agency shall at the same time transmit, in respect of matters falling within the purview of that agency, a copy of its report, or relevant extracts therefrom, as appropriate, to that agency.

*Art. 18.* 1. The States parties shall furnish their reports in stages, in accordance with a programme to be established by the Economic and Social Council after consultation with the States parties to this covenant and the specialized agencies concerned.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under this covenant.

3. Where relevant information has already previously been furnished to the United Nations or to any

specialized agency by any State party, it will not be necessary to reproduce that information, but a precise reference to the information so furnished will suffice.

*Art. 19.* Pursuant to its responsibilities under the Charter in the field of human rights, the Economic and Social Council may make arrangements with the specialized agencies in respect of their reporting to it on the progress made in achieving the observance of the provisions of this covenant falling within the scope of their activities. These reports may include particulars of decisions and recommendations on such implementation adopted by their competent organs.

*Art. 20.* The Economic and Social Council may transmit to the Commission on Human Rights for study and general recommendation or as appropriate for information the reports concerning human rights submitted by States, and those concerning human rights submitted by the specialized agencies.

*Art. 21.* The States parties directly concerned and the specialized agencies may submit comments to the Economic and Social Council on any general recommendation under article 20 or reference to such general recommendation in any report of the Commission or any documentation referred to therein.

*Art. 22.* The Economic and Social Council may submit from time to time to the General Assembly, with its own reports, reports summarizing the information made available by the States parties to the Covenant directly to the Secretary-General and by the specialized agencies under article ... indicating the progress made in achieving general observance of these rights.

*Art. 23.* The Economic and Social Council may bring to the attention of the international organs concerned with technical assistance or of any other appropriate international organ any matters arising out of the reports referred to in this part of the Covenant which may assist such organs in deciding, each within its competence, on the advisability of international measures likely to contribute to the progressive implementation of this covenant.

*Art. 24.* The States parties to the Covenant agree that international action for the achievement of these rights includes such methods as conventions, recommendations, technical assistance, regional meetings and technical meetings and studies with governments.

*Art. 25.* Nothing in this covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies, which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in this covenant.

<sup>1</sup> See *Tearbook on Human Rights for 1953*, p. 370.

<sup>2</sup> See *Report of the Tenth Session of the Commission on Human Rights* (E/2573).

<sup>3</sup> See *Tearbook on Human Rights for 1950*, p. 458.

<sup>4</sup> Text and numbering as they appear in the *Report of the Tenth Session of the Commission on Human Rights* (E/2573), Annex I.

## PART V

*Art. 26.* 1. This covenant shall be open for signature and ratification or accession on behalf of any State Member of the United Nations or of any non-member State to which an invitation has been extended by the General Assembly.

2. Ratification of or accession to this covenant shall be effected by the deposit of an instrument of ratification or accession with the Secretary-General of the United Nations, and as soon as twenty States have deposited such instruments, the Covenant shall come into force among them. As regards any State which ratifies or accedes thereafter the Covenant shall come into force on the date of the deposit of its instrument of ratification or accession.

3. The Secretary-General of the United Nations shall inform all Members of the United Nations, and other States which have signed or acceded, of the deposit of each instrument of ratification or accession.

*Art. 27.* The provisions of the Covenant shall extend to all parts of federal States without any limitations or exceptions.

*Art. 28.* The provisions of the present covenant shall extend to or be applicable equally to a signatory metropolitan State and to all the territories, be they Non-Self-Governing, Trust, or colonial territories, which are being administered or governed by such metropolitan State.

*Art. 29.* 1. Any State party to the Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendments to the States parties to the Covenant with a request that they notify him whether they favour a conference of States parties for the purpose of considering and voting upon the proposal. In the event that at least one-third of the States favours such a conference the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Such amendments shall come into force when they have been approved by the General Assembly and accepted by a two-thirds majority of the States parties to the Covenant in accordance with their respective constitutional processes.

3. When such amendments come into force they shall be binding on those Parties which have accepted them, other parties being still bound by the provisions of the Covenant and any earlier amendment which they have accepted.

DRAFT COVENANT ON CIVIL AND  
POLITICAL RIGHTS

...

## PART V

*Art. 49.* 1. The States parties to this Covenant undertake to submit a report on the legislative or

other measures, including judicial remedies, which they have adopted and which give effect to the rights recognized herein (a) within one year of the entry into force of the Covenant for the State concerned and (b) thereafter whenever the Economic and Social Council so requests upon recommendation of the Commission on Human Rights and after consultation with the States parties.

2. Reports shall indicate factors and difficulties, if any, affecting the progressive implementation of article 22, paragraph 4, of this covenant.

3. All reports shall be submitted to the Secretary-General of the United Nations for the Economic and Social Council which may transmit them to the Commission on Human Rights for information, study and, if necessary, general recommendations.

4. The specialized agencies shall receive such parts of the reports concerning the rights as fall within their respective fields of activity.

5. The States parties directly concerned and the above agencies may submit to the Economic and Social Council observations on any general recommendation that may be made in accordance with paragraph 3 of this article.

*Art. 50.* Nothing in this covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies, which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in this covenant.

[Part VI, consisting of articles 51-54, contains the same provisions as Part V (articles 26-29) of the Draft Covenant on Economic, Social and Cultural Rights.]

The Commission adjourned *sine die* the consideration of the question of inclusion of an article on the right of property in the draft covenant on economic, social and cultural rights. It considered, but did not adopt, provisions concerning the application of the Human Rights Committee procedure of the draft covenant on civil and political rights to the draft covenant on economic, social and cultural rights, and provisions concerning the right of petition of individuals, groups and non-governmental organizations for either covenant.

The Commission decided to request the Economic and Social Council to forward to the General Assembly certain proposals and amendments relating to the admissibility or non-admissibility of reservations to the draft covenant on civil and political rights and proposals relating to the article concerning the coming into force of the covenants which were connected with the question of reservations.

At its eighteenth session, 29 June-6 August 1954, the Economic and Social Council, by resolutions 545 B (XVIII) and 547 G (XVIII) transmitted the draft covenants to the General Assembly with the report of the Commission and the proposals on reservations

together with its records of discussion and a recommendation of the Commission on the Status of Women concerning article 22 of the draft covenant on civil and political rights. These documents were also brought to the attention of Member States, whose comments were to be collected by the Secretary-General.

The General Assembly, at its ninth session, 21 September–17 December 1954, held a first reading of the draft covenants which consisted of a general

discussion and presentation of proposals and amendments. The Assembly by resolution 833 (IX) invited the governments of Member and non-member States to submit amendments, additions or observations on the drafts and asked the specialized agencies to send in comments. It requested the Secretary-General to prepare an annotation of the text of the draft covenants, to distribute to governments the comments received and to present a working paper containing all amendments and proposed new articles which might be submitted by governments.

### 3. INTERNATIONAL RESPECT FOR THE RIGHT OF PEOPLES AND NATIONS TO SELF-DETERMINATION<sup>1</sup>

The General Assembly in resolution 837 (IX) requested the Commission on Human Rights to complete its recommendations concerning international respect for the right of peoples and nations to self-determination, including recommendations concerning their permanent sovereignty over their natural wealth and resources, having due regard to

the rights and duties of States under international law and to the importance of encouraging international co-operation in the economic development of under-developed countries. Two proposals elaborated by the Commission at its tenth session<sup>2</sup> had been returned to it by the Economic and Social Council for reconsideration (Council resolution 545 G (XVIII)).

<sup>1</sup> Cf. *Yearbook on Human Rights for 1953*, p. 370.

<sup>2</sup> See document E/2573, Chapter IV.

### 4. PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

In its resolution 545 C (XVIII), the Economic and Social Council invited the International Labour Organisation to undertake a study of discrimination in the field of employment and occupation, to be carried out on a global basis in accordance with article 2, paragraph 2, of the Universal Declaration of Human Rights, and the Secretary-General, other specialized agencies, and non-governmental organizations to place at the disposal of the ILO material available to them relating to discrimination in employment and occupation.

The Council in resolution 545 D (XVIII) requested the Sub-Commission on Prevention of Discrimination and Protection of Minorities to take, as the objective

of its study of discrimination in relation to "emigration, immigration, and travel", paragraph 2 of article 13 of the Universal Declaration of Human Rights — namely, the right of everyone to "leave any country, including his own, and to return to his country".

In resolution 546 (XVIII), the Council made arrangements for the convening of a conference of non-governmental organizations interested in the eradication of prejudice and discrimination (a) to exchange views concerning the most effective means of combating discrimination; (b) to co-ordinate their endeavours in this work if they find it desirable and feasible; and (c) to consider the possibility of establishing common objectives and programmes.

### 5. STATUS OF WOMEN

#### (a) *Political Rights of Women*

The Convention on the Political Rights of Women,<sup>1</sup> opened for signature on 31 March 1953, entered into force on 7 July 1954.

The Economic and Social Council, by resolution 547 B (XVIII), reiterated its appeal to Members of the United Nations to become Parties to the Convention, and recommended such action also to non-member States which were or were to become members

of a specialized agency or Parties to the Statute of the International Court of Justice. By the end of 1954, eighteen countries had ratified or acceded to the Convention.

#### (b) *Nationality of Married Women*

In resolution 547 D (XVIII) the Economic and Social Council recommended to governments that they take action, as necessary, to ensure that a woman shall have the same right as a man to retain her nationality on marriage to a person of different nationality, and further, in order to give the principle

<sup>1</sup> For the text of the Convention, see *Yearbook on Human Rights for 1952*, pp. 375–376.

of equality full effect, that an alien wife shall acquire the nationality of her husband only as the result of her positive request.

The Council decided by resolution 547 C (XVIII) to transmit to Member States for their observations and to the International Law Commission for its information a revised draft of the Convention on the Nationality of Married Women.

(c) *Status of Women in Private Law*<sup>1</sup>

(1) *Customs, Ancient Laws and Practices affecting the Human Dignity of Women*

The General Assembly in resolution 843 (IX) urged all States, including States administering Non-Self-Governing and Trust Territories, to take all appropriate measures with a view to abolishing customs, ancient laws, and practices relating to marriage and the family, which the General Assembly found inconsistent with the principles of the United Nations Charter and the Universal Declaration of Human Rights, by "ensuring complete freedom in the choice of a spouse; abolishing the practice of bride-price; guaranteeing the right of widows to the custody of their children and their freedom as to re-marriage; completely eliminating child marriages and the betrothal of young girls before the age of puberty and establishing appropriate penalties where necessary; establishing a civil or other register in which all marriages and divorces will be recorded; ensuring that all cases involving personal rights be tried before a competent judicial body; ensuring also that family allowances, where these are provided, be administered in such a way as to benefit directly the mother and child". The Assembly believed that the elimination of such customs, ancient laws, and practices would tend to the recognition of the human dignity of women and contribute to the benefit of the family as an institution. The Assembly further recommended that special efforts be made to inform public opinion in all areas concerned about the Universal Declaration of Human Rights and about existing legislation affecting the status of women.

(2) *Matrimonial Regimes*

The Economic and Social Council recommended in resolution 547 I (XVIII) that Member States take all necessary steps to eliminate discriminatory provisions from their legislation dealing with matrimonial regimes and drew their attention to "the desirability of a statutory matrimonial regime which would provide for the separation of the property belonging to the spouses at the time of marriage and either for the separation of property acquired during marriage or for common ownership of property acquired by both spouses during marriage, such community property to be administered jointly by the spouses; and in either case, on dissolution of marriage, property acquired during marriage would be divided equally between them or their heirs".

<sup>1</sup> See also section 2, p. 408 above.

The Council expressed the belief that the statutory matrimonial regimes in many countries are incompatible with the equality of spouses during marriage and at its dissolution proclaimed in the Universal Declaration of Human Rights.

(3) *Right of Married Women to Engage in Independent Work*

The Council recommended, in resolution 547 J (XVIII), that governments take all necessary measures to ensure the right of a married woman to undertake independent work, to carry it on and to administer and dispose of her earnings without the necessity of securing her husband's authorization. The Council noted that in the legal systems of many countries the husband has the power to prevent his wife from engaging in independent work, and that in some he has control over her earnings, and expressed the belief that such limitation of the legal capacity and property rights of married women is incompatible with the principle of equality of spouses during marriage as proclaimed in the Universal Declaration of Human Rights.

(d) *Equal Pay for Equal Work*

In resolution 547 E (XVIII), the Council, observing that the Convention and the Recommendation concerning Equal Remuneration for Men and Women Workers for Work of Equal Value,<sup>2</sup> both adopted by the International Labour Conference in 1951, provide basic standards and suggestions useful to all governments, recommended that all States which had not yet done so, whether Members of the United Nations or not, take legislative and other action to establish and implement the principle of equal pay for equal work for all classes of men and women wage-earners. At the same time it commended the activities of governmental and non-governmental organizations the purpose of which is to carry this principle into effect everywhere, including the Trust and Non-Self-Governing Territories.

(e) *Educational Opportunities for Women*

In resolution 547 K (XVIII), the Council recommended, *inter alia*, that States, both Members and non-members of the United Nations, ensure women equal access with men to all types of education, including vocational and technical education, without any of the distinctions mentioned in article 2 of the Universal Declaration of Human Rights, and equal opportunities to obtain state scholarships for education in any field and in preparation for all careers; and institute free, compulsory, primary education.

(f) *Other Developments*

Resolutions 547 D, F, K, L and M (XVIII) concern various studies and programmes of the Secretary-General, the ILO, UNESCO and the United Nations Social Commission, of concern to the status of women.

<sup>2</sup> For the text of both the Convention and the Recommendation, see *Yearbook on Human Rights for 1951*, pp. 469-472.



## 6. SLAVERY

(a) *Slavery Convention of 1926*

In resolution 525 A (XVII) the Economic and Social Council, at its seventeenth session, 30 March–30 April 1954, repeated its “urgent recommendation to all States, both Members and non-members of the United Nations, which have not already done so, to accede as soon as possible to the Slavery Convention of 1926 in respect of their territories and the Non-Self-Governing and Trust Territories for which they are responsible . . .”. It also requested them to accede to the protocol transferring to the United Nations the functions undertaken by the League of Nations under the 1926 Convention.<sup>1</sup>

(b) *Other Action*

Also, in resolution 525 A (XVII), the Council appointed a rapporteur to prepare a concise summary of the information relating to the existence of slavery and practices resembling slavery that had been or would be received from governments, non-govern-

mental organizations in consultative status with the Council, and the International Labour Organisation, in accordance with resolutions 238 (IX), 276 (X), 388 (XIII), 475 (XV) and 525 (XVII) of the Council. The Rapporteur appointed was His Excellency Mr. Hans Engen, Permanent Representative of Norway to the United Nations.

In resolution 525 B (XVII), the Council decided to transmit to all governments and to the International Labour Organisation, for their comments, “any draft supplementary convention on slavery submitted by governments.” The only such draft submitted and accordingly circulated was a draft convention on the abolition of slavery and servitude, prepared by the Government of the United Kingdom (E/2540/Add.4).

<sup>1</sup> For the text of the Protocol, see *Tearbook on Human Rights for 1953*, pp. 345–346. For the text of the Slavery Convention of 1926, see *League of Nations Treaty Series*, Vol. 60 (1927), p. 253.

## 7. FORCED LABOUR

After considering the report of the *Ad Hoc* Committee on Forced Labour (E/2431),<sup>1</sup> the Council in resolution 524 (XVII) condemned systems of forced labour which are employed as a means of political coercion or punishment for holding or expressing political views, and which are on such a scale as to constitute an important element in the economy of a given country. It appealed to all governments to re-examine their laws and administrative practices “in the light of present conditions and the increasing desire of the peoples of the world to reaffirm faith in fundamental human rights, and in the dignity and worth of the human person”. Noting with satisfaction the action which the Governing Body of

the International Labour Office had already taken on the *Ad Hoc* Committee’s recommendations, the Council invited the International Labour Organisation to continue its consideration of the question and to take what further action it deemed appropriate towards abolishing forced labour throughout the world. Its Director-General was invited to prepare, jointly with the Secretary-General, a further report on certain aspects of forced labour.

The Council transmitted its resolution to the General Assembly, which in resolution 842 (IX) endorsed its condemnation of forced labour, supported its appeal to governments and requested the Council and the International Labour Organisation to continue their efforts in the field.

<sup>1</sup> Compare *Tearbook on Human Rights for 1953*, p. 380.

## 8. FREEDOM OF INFORMATION

The report on freedom of information (E/2426 and Add. 1) prepared by Mr. Salvador P. López in accordance with resolution 442 C (XIV) of the Economic and Social Council<sup>1</sup> was considered at the Council’s seventeenth session, 30 March–30 April 1954, and the Council’s resolutions relating to freedom of information which are referred to below were adopted following this consideration.

(a) *Technical Assistance in Freedom of Information*

Noting a resolution (522 J (XVII)) of the Council, the General Assembly, in resolution 839 (IX), author-

ized the Secretary-General to render, at the request of Member States, services which do not fall within the scope and objectives of existing technical assistance programmes, in order to assist them in promoting freedom of information.

(b) *Professional Training of Information Personnel*

In resolution 522 F (XVII), the Council urged governments, particularly those with highly developed mass communications, to offer training facilities to foreign information personnel and students of journalism. The Council also made recommendations regarding possible increases in the scope of UNESCO’s

<sup>1</sup> See *Tearbook on Human Rights for 1952*, pp. 431–432.

mass communications fellowship programme and in the number of fellowships and scholarships for information personnel under the regular and expanded technical assistance programmes.

(c) *Encouragement and Development of Independent Domestic Information Enterprises*

In resolution 522 K (XVII), the Council drew the attention of governments to the suggestions for action contained in a report prepared by the Secretary-General in conjunction with UNESCO on the encouragement and development of independent domestic information enterprises (E/2534).

It invited the governments of the under-developed countries to study the possibility of encouraging the development of existing and the establishment of new independent radio broadcasting facilities, news agencies and other information enterprises and drew their attention to the possibility of seeking technical assistance from the United Nations, the specialized agencies and other inter-governmental organizations. Further recommendations were addressed to the United Nations and the specialized agencies—in particular, UNESCO.

(d) *Draft International Code of Ethics for the Use of Information Personnel*

The General Assembly in resolution 838 (IX) decided to take no further action at that time in relation to the organization of an international professional conference to prepare an international code of ethics for the use of information personnel.<sup>1</sup> It noted that the information enterprises and national and international associations which favoured such a conference did not appear to constitute a sufficiently representative group. The Assembly decided, however, that the draft code elaborated by the Sub-Commission on Freedom of Information and of the Press should be transmitted to the enterprises and associations which had been in touch with the Secretary-General about this matter, "for their information and for such action as they may deem proper".

(e) *Status and Movement of Foreign Correspondents*

The Economic and Social Council in resolution 522 C (XVII) decided to transmit to both Members and non-members of the United Nations, for possible implementation of the administrative measures contemplated therein, a "Study of the Law and Practice governing the Status and Work of Foreign News Personnel and Measures to Facilitate the Work of Such Personnel" (E/CN.4/Sub.1/140) and a "Study relating to the Definition and Identification of Foreign Correspondents" (E/CN.4/Sub.1/148).

(f) *International Broadcasting*

In resolution 522 H (XVII), the Council urged governments to reach an agreement on the distribu-

tion of radio frequencies on an equitable basis and to give adequate attention in the preparation of such an agreement to the desirability of increasing the flow of objective news and information through international broadcasting. The International Telecommunication Union was invited to consider the possible development of new techniques leading to economy in the use of frequencies and to the elimination of wasteful competition and duplication.

(g) *Strengthening of Peace through the Removal of Barriers to Free Exchange of Information and Ideas*

The General Assembly in resolution 819 (IX) called upon all governments to give effect faithfully to its resolution 290 (IV) on the essentials of peace, by which it had called upon every nation to remove the barriers which deny to peoples the free exchange of information and ideas essential to international understanding and peace. At the same time the Assembly reaffirmed its resolution 381 (V) condemning propaganda against peace<sup>2</sup> as well as resolution 110 (II) entitled "Measures to be taken against Propaganda and the Inciters of a New War".

(h) *Other Developments*

The General Assembly, by resolution 840 (IX), postponed until its eleventh session, at the latest, consideration of the draft convention on Freedom of Information, while requesting the Economic and Social Council to continue its efforts on the technical level to promote freedom of information and to formulate recommendations regarding the draft convention.

The Assembly in resolution 841 (IX) requested the parties to the International Convention concerning the Use of Broadcasting in the Cause of Peace, signed on 23 September 1936, to state whether they wish to transfer to the United Nations the functions which, under the Convention's terms, were performed by the League of Nations. It instructed the Secretary-General to prepare and circulate to the same parties a draft protocol which would have this purpose and which would also provide for the accession of states not parties or signatories to the original Convention.

The Economic and Social Council, in resolution 522 B (XVII), invited the International Telecommunication Union to report to the Council's nineteenth session on action taken by governments in response to the recommendation of the Plenipotentiary Conference of the Union, held in 1952 at Buenos Aires, that the Union's members and associate members facilitate the unrestricted transmission of news by telecommunication services.<sup>3</sup>

In resolution 522 I (XVII), the Council recommended that governments which had not yet done so adhere to the UNESCO Agreement on the Importa-

<sup>2</sup> See *Yearbook on Human Rights for 1950*, p. 482.

<sup>3</sup> See *Yearbook on Human Rights for 1952*, p. 406. The report invited by the Council was circulated as document E/2681.

<sup>1</sup> For the text of the draft Code, see *Yearbook on Human Rights for 1952*, pp. 433-434.

tion of Educational, Scientific and Cultural Materials of 22 November 1950.<sup>1</sup> It also recommended by resolution 522 D (XVII), that governments adhere to the Universal Copyright Convention of 6 September 1952;<sup>2</sup> drew their attention to the importance of the

<sup>1</sup> For text of agreement see *Yearbook on Human Rights for 1950*, pp. 411-415.

<sup>2</sup> For text of Convention see *Yearbook on Human Rights for 1952*, pp. 398-403.

protection of performers' rights to ensure freedom of information; and invited UNESCO to initiate a study of copyright in respect of news and information media and to formulate recommendations thereon.

Resolutions 522 A, E, G and L (XVII) of the Council concerned various studies and programmes of the Secretary-General or specialized agencies requested or in progress.

## 9. TRADE UNION RIGHTS (FREEDOM OF ASSOCIATION)

The Economic and Social Council took the following action in respect of allegations of infringements of trade union rights concerning two States not members of the International Labour Organisation:

The Government of Romania not having replied to previous invitations to submit observations on certain allegations, the Council in resolution 523 A (XVII) invited it to reconsider its attitude and indicate its willingness to co-operate with the United Nations in its efforts to safeguard trade union rights. (Romania was not then a member of the United Nations.)

The Council, in resolution 523 B (XVII) invited the Government of Spain, from which no definitive reply had been received regarding certain allegations,

similarly to reconsider its attitude. It moreover decided that additional allegations received in 1953 were to be brought to the attention of that Government (Spain, too, was not then a member of the United Nations).

Allegations concerning the Union of Soviet Socialist Republics, which had recently re-joined ILO, were forwarded by the Council on 28 July 1954 to the Governing Body of that organization for consideration as to referral to its Fact-finding and Conciliation Commission on Freedom of Association, together with all the documents relating to that matter.<sup>1</sup>

<sup>1</sup> *Official Records of the Economic and Social Council, Eighteenth Session*, 819th meeting.

## 10. PROTECTION OF CHILDREN<sup>1</sup>

During 1954 agreements were signed by the United Nations Children's Fund and the following States or territories: Spain (7 May), Mexico (20 May), New Zealand (26 August), Western Samoa (26 August) and Netherlands New Guinea (31 December).

Each of the agreements concluded between the United Nations Children's Fund and various governments contains an article whereby the government undertakes to see that supplies are dispensed or

distributed equitably and efficiently on the basis of need, without discrimination because of race, creed, nationality status or political belief.

In resolution 543 (XVIII) the Economic and Social Council, *inter alia*, noted with satisfaction the periodic reports on the work of the Fund and invited all States to continue their efforts to expand its resources.

<sup>1</sup> See *Yearbook on Human Rights for 1953*, p. 352, and the references supplied in footnote 1 thereto.

## 11. REFUGEES AND STATELESS PERSONS

### (a) *Convention relating to the Status of Refugees*

The Convention relating to the Status of Refugees, signed on 28 July 1951,<sup>1</sup> entered into force on 22 April 1954. During 1954, it was ratified by the following: Australia (22 January), the United Kingdom (11 March), Monaco (18 May) and France (23 June).

### (b) *The Office of the United Nations High Commissioner for Refugees*

The Economic and Social Council at its eighteenth session considered the report of the United Nations

<sup>1</sup> See *Yearbook on Human Rights for 1951*, pp. 579 and 581-588.

High Commissioner for Refugees, submitted to it for transmission to the ninth session of the General Assembly (E/2605). This report relates to the activities of the Office of the High Commissioner for Refugees from June 1953 to May 1954.<sup>2</sup>

The Council adopted resolution 549 (XVIII) noting that some complementary aid had been shown to be necessary to accelerate the implementation of a programme for permanent solutions of the problems of refugees, and that the contributions received by

<sup>2</sup> The remainder of 1954 is covered in the report of the High Commissioner considered at the nineteenth session of the Council, E/2678.

the High Commissioner in response to his various appeals had not permitted him to meet the emergency requirements of the most needy refugees; it expressed the opinion that the programme submitted by the High Commissioner for granting emergency aid, as well as for the implementation of permanent solutions for the refugee problem, contained constructive elements for an effective attempt at coping with the problem; it invited the High Commissioner to make available to the General Assembly at its ninth regular session such additional information as might facilitate the Assembly's task in the consideration of his proposals; and recommended that, in the event of the Assembly's approving these proposals, (a) the General Assembly should ask the Negotiating Committee for Extra-budgetary Funds to institute negotiations with governments of States Members and non-members of the United Nations concerning contributions for the High Commissioner's programme, and (b) the question of the desirability and the composition and terms of reference of an executive committee to give directives to the High Commissioner on the implementation of his programme should be examined by the Council on the basis of proposals submitted by the High Commissioner after consultation with his Advisory Committee.

It was agreed (E/2634 and Corr.1) that the recommendation to the Assembly should be understood in the sense that, irrespective of the Assembly's decision regarding the High Commissioner's programme for permanent solutions, the Assembly should ask the Negotiating Committee on Extra-budgetary Funds to institute negotiations with governments for contributions to the United Nations Refugee Emergency Fund.

In resolution 832 (IX), the General Assembly, while considering that the ultimate responsibility for the refugees within the High Commissioner's mandate fell in fact upon the countries of their residence, authorized the High Commissioner to undertake a programme designed to achieve permanent solutions within the period of his mandate for the refugees included within the proposals made in his report. It requested the Negotiating Committee for Extra-budgetary Funds, in co-operation with the High Commissioner, to negotiate with the governments of both Member and non-member States of the United Nations for voluntary contributions towards a fund based on the High Commissioner's proposals. The fund was to be devoted principally to promoting permanent solutions and was also to permit emergency assistance to the most needy cases among the refugees. It was to incorporate the emergency fund authorized in 1951.<sup>1</sup> The amount of the new fund was to be determined by the Advisory Committee on Refugees. The Assembly also authorized the High Commissioner himself to make appeals for funds. In addition it

requested the Economic and Social Council either to establish an Executive Committee responsible for giving directives to the High Commissioner in carrying out his programme and for exercising the necessary controls in the use of funds allotted to his Office or to revise the terms of reference and the composition of his Advisory Committee to enable it to carry out those duties.

The Assembly furthermore requested the governments concerned, in negotiating agreements with the High Commissioner for projects for permanent solutions under this programme, to give assurances that they would assume full financial responsibility should any of the refugees within the scope of the programme still require assistance at the end of the stipulated period. It urged both Member and non-member States to co-operate with the High Commissioner to the fullest extent in this programme.

(c) *United Nations Relief and Works Agency for Palestine Refugees in the Near East*

At its ninth session the General Assembly had before it the fifth annual report of the Director of the United Nations Relief and Works Agency for Palestine Refugees in the Near East and the special report of the Director and the Advisory Commission of UNRWA.<sup>2</sup> In resolution 818 (IX) the General Assembly, noting that repatriation or compensation of the refugees had not been effected and that their situation continued to be a matter of grave concern, extended the Agency's mandate for five years, ending 30 June 1960. It requested the Agency to continue consultations with the United Nations Conciliation Commission for Palestine on questions of repatriation, re-settlement, rehabilitation and compensation and requested the Governments of the area to continue to co-operate with the Agency's Director in seeking and carrying out projects capable of supporting substantial numbers of refugees. The resolution of the General Assembly also contained a number of financial arrangements.

(d) *Convention on the Status of Stateless Persons*

The United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons which met in July 1951 had adopted a Convention relating to the Status of Refugees,<sup>3</sup> but had referred back to the United Nations for further study a draft protocol relating to the status of stateless persons.<sup>4</sup> The Economic and Social Council at its seventeenth session decided by resolution 526 A (XVII) to convene a second conference of plenipotentiaries for the purpose of revising the draft protocol in the light of the Status of Refugees Convention and comments made by governments, and of opening it for signature.

<sup>2</sup> *Official Records of the General Assembly, Ninth Session, Supplements Nos. 17 and 18.*

<sup>3</sup> See p. 412 above.

<sup>4</sup> For the text of the draft protocol, prepared in 1950 by an *ad hoc* committee of the Economic and Social Council, see *Tearbook on Human Rights for 1950*, p. 518.

<sup>1</sup> That fund was authorized by General Assembly resolution 538 B (VI). See *Tearbook on Human Rights for 1951*, p. 580.

The United Nations Conference on the Status of Stateless Persons met at United Nations Headquarters, from 13 to 23 September 1954. Invitations to attend were extended to all States which had been invited to attend the conference of plenipotentiaries of 1951—that is to say, to all States, both Members and non-members of the United Nations. The governments of the following twenty-seven states sent delegates to the conference: Australia, Belgium, Brazil, Cambodia, Colombia, Costa Rica, Denmark, Ecuador, El Salvador, France, Federal Republic of Germany, Guatemala, Holy See, Honduras, Iran, Israel, Liechtenstein, Monaco, Netherlands, Norway, Philippines, Sweden, Switzerland, Turkey, United Kingdom of Great Britain and Northern Ireland, Yemen and Yugoslavia.

Argentina, Egypt, Greece, Indonesia and Japan were represented by observers, and a representative of the United Nations High Commissioner for Refugees participated without the right to vote. The International Labour Organisation was similarly represented. Non-governmental organizations in consultative status with the Economic and Social Council were permitted to submit written or oral statements. The Conference elected as its president Mr. Knud Larsen of Denmark.

The Conference, while using the draft Protocol relating to the Status of Stateless Persons and the Convention relating to the Status of Refugees as the basis of its discussions, decided to prepare an independent convention on statelessness rather than a protocol to the Status of Refugees Convention. The Convention relating to the Status of Stateless Persons was opened for signature on 28 September 1954.<sup>1</sup> The Convention was to enter into force after ratification by six States.

The Conference recommended that each Contracting State, when it recognizes as valid the reasons for which a person has renounced the protection of the State of which he is a national, consider sym-

pathetically the possibility of according to that person the treatment which the Convention accords to stateless persons; and recommended further that, in cases where the State in whose territory the person resides has decided to accord the treatment referred to above, other contracting States also accord him the treatment provided for by the Convention.

According to another resolution, the Conference, being of the opinion that article 33 of the Convention relating to the Status of Refugees of 1951<sup>2</sup> is an expression of the generally accepted principle that no State should expel or return a person in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion, did not find it necessary to include in the Convention relating to the Status of Stateless Persons an article equivalent to article 33 of the Convention relating to the Status of Refugees of 1951.

#### (c) *Elimination or Reduction of Future Statelessness*

The General Assembly in resolution 896 (IX) expressed the desire that, as soon as at least twenty States had agreed to co-operate in it, an international conference of plenipotentiaries be convened for the purpose of concluding a convention for the reduction or elimination of future statelessness. It provided for communication of the two draft conventions on, respectively, elimination and reduction of future statelessness prepared by the International Law Commission<sup>3</sup> to all Members of the United Nations and to all non-members of the Organization which were or were thereafter to become members of a specialized agency or parties to the Statute of the International Court of Justice. At the same time it requested these governments to give early consideration to the merits of such a convention.

<sup>2</sup> See *Tearbook on Human Rights for 1951*, p. 586.

<sup>3</sup> *Official Records of the General Assembly, Ninth Session, Supplement No. 9, Chapter II.*

<sup>1</sup> See pp. 369–375 above.

## 12. MEASURES FOR THE PEACEFUL SOLUTION OF THE PROBLEM OF PRISONERS OF WAR

The General Assembly's *Ad Hoc* Commission on Prisoners of War held its fifth and sixth sessions in March and September 1954, respectively.

At its fifth session, the Commission issued a declaration emphasizing the need for treating the prisoners of war problem in a non-political way. It stated that it had been informed that thousands more prisoners of war had been returned to their homes since December 1953 and that the fate of thousands of others, previously listed as missing, had been clarified. Pointing out that the standards of international conduct, particularly as set forth in the

Geneva Conventions of 1929 and of 1949<sup>1</sup> require that a full accounting be made of all prisoners of war, the Commission held full accounting to mean (a) that the names of all prisoners still detained be made known, as well as the reason for and the place of their continued detention; and (b) that the names of prisoners who had died while under detention be

<sup>1</sup> Convention of 27 July 1929 concerning the Treatment of Prisoners of War, and Geneva Convention relative to the Treatment of Prisoners of War, of 12 August 1949. Parts of the latter Convention are reproduced in *Tearbook on Human Rights for 1949*, pp. 301–306.

made known, as well as the date and cause of death and the manner and place of burial in each case.

While accepting that, due to the devastation and chaos of war, it was not to be expected that the process of accounting would ever be complete, the Commission asked every government which had had prisoners under its control to do its utmost in giving such an accounting, be it to the Commission itself, to the Secretary-General of the United Nations, to the countries whose nationals were involved, or to some international agency specially concerned with prisoners of war.<sup>1</sup>

At its sixth session, the Commission prepared a report (A/AC.46/17), which stated that considerable progress had been made during the year in repatriating prisoners of war and detained civilians and that progress had also been made in accounting for prisoners of war. Pointing out that the fate of prisoners convicted of war crimes was a problem going beyond the mission entrusted to it, the *Ad Hoc* Commission confined itself to expressing the wish that that problem be the subject, at some later date, of an international convention.

<sup>1</sup> For the text of the Declaration, see document A/AC.46/17, Annex I.

### 13. HUMAN RIGHTS IN TRUST TERRITORIES<sup>1</sup>

#### (a) *Annual Reports*

The Trusteeship Council at its thirteenth and fourteenth sessions (28 January–25 March and 2 June–16 July 1954 respectively) examined annual reports received from the administering authorities of the eleven Trust Territories, including the strategic area of the Trust Territory of the Pacific Islands. In reviewing the political, economic and social advancement in these territories, the Council adopted certain conclusions and recommendations referring to human rights.<sup>2</sup>

#### (b) *Petitions*

During its thirteenth and fourteenth sessions, the Trusteeship Council dealt with a total of 436 written petitions and granted four oral hearings to petitioners.<sup>3</sup> The Standing Committee on Petitions, moreover, presented to the Council's thirteenth session a report (T/L.444) containing information on the implementation of resolutions previously adopted by the Council on petitions.

The General Assembly granted oral hearings to petitioners representing organizations in the Trust Territory of the Cameroons under French Administration. In resolution 859 (IX) it took note of their statements and transmitted them to the Trusteeship

Council for study, recommending that the Council request its next visiting mission to study the matters raised by the petitioners and that the Council report accordingly to the Assembly.

#### (c) *Visits to Trust Territories*

The Trusteeship Council continued at its thirteenth session consideration of the reports of the visiting mission to Trust Territories in West Africa, 1952,<sup>4</sup> concurrently with the examination of the annual reports of the Administering Authorities on the Trust Territories concerned. In its resolution 867 (XIII) it invited the Administering Authorities to give the most careful consideration to the conclusions of the visiting mission as well as to the comments made thereon by the members of the Council.

During its thirteenth and fourteenth sessions the Council made arrangements for sending a visiting mission to Trust Territories in East Africa in 1954. By resolution 999 (XIV) of the Trusteeship Council,<sup>5</sup> the mission was directed to investigate and report on the steps taken in the Trust Territories of Ruanda-Urundi, Tanganyika and Somaliland under Italian Administration towards the realization of the objectives of article 76 (b) of the United Nations Charter.<sup>6</sup> The mission was directed, *inter alia*, to receive petitions and to investigate on the spot, after consultation with the local representative of the Administering

<sup>1</sup> See also p. 409 above.

<sup>2</sup> The Council's conclusions and recommendations regarding Tanganyika, Ruanda-Urundi, Somaliland under Italian Administration, the Cameroons under British and the Cameroons under French Administration, Togoland under British and Togoland under French Administration, Western Samoa, New Guinea and Nauru may be found in the Trusteeship Council's Report to the General Assembly covering the period from 22 July 1953 to 16 July 1954. (*Official Records of the General Assembly, Ninth Session, Supplement No. 4*); those regarding the Trust Territory of the Pacific Islands may be found in the report of the Trusteeship Council to the Security Council (S/3272).

<sup>3</sup> The Council's resolutions on these petitions, which include recommendations to Administering Authorities of the territories, may be found in *Official Records of the Trusteeship Council*, thirteenth and fourteenth sessions, Supplement No. 1.

<sup>4</sup> Documents T/1040 to T/1043. For observations on the Mission's reports submitted by the Administering Authorities, see documents T/1068 to T/1070 and T/1074.

<sup>5</sup> Compare also *Official Records of the General Assembly, Ninth Session, Supplement No. 4, Ch. IV*.

<sup>6</sup> *Art. 76*. The basic objectives of the trusteeship system ... shall be:

...

(b) To promote the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned, and as may be provided by the terms of each trusteeship agreement;



Authority concerned, such petitions as, in its opinion, warranted special investigation.

(d) *Matters relating to Political Rights*

The General Assembly, in resolution 853 (IX), recommended that the Trusteeship Council instruct its visiting missions (a) not only to consider such expressions of public opinion as may be spontaneously brought before them, but also to take the initiative in seeking out public opinion on all important problems and to undertake popular consultations in whatever forms the missions may deem appropriate; and (b) to report and make recommendations concerning the development of a free public opinion in the Trust Territories.

The Assembly furthermore recommended that the Trusteeship Council "examine and propose concrete action upon, as part of its examination of conditions in each Trust Territory, petitions which may reflect public opinion on questions of general concern to the development of the territory", and that the Council request the Administering Authorities to make copies of their annual reports promptly available to the peoples of the territories. It also recommended that the Council, as a means of ensuring, in cases which it deemed urgent, that a given situation in a Trust Territory met with the freely expressed wishes of the people, immediately grant hearings to "qualified representatives of public opinion" who

applied to be heard or, if they were unable to travel, that the Council examine all communications expressing their points of view.

In its resolution 858 (IX) the General Assembly, *inter alia*, recommended to the Administering Authorities the establishment or further development of representative organs of government and administration, and increasing participation therein by indigenous elements, as a means of facilitating an approximate determination of the date on which the populations of the Trust Territories would be prepared for self-government or independence.

In resolution 860 (IX) the General Assembly decided that steps should be taken to ascertain the wishes as to their future of the inhabitants of the Trust Territory of Togoland under British Administration, in view of the eventual revision or termination of the trusteeship agreement relating to that territory due to a new situation arising out of changes in the status of the Gold Coast and due to the stage of development reached by the people of Togoland under British Administration.<sup>1</sup> The Trusteeship Council was requested to report on the arrangements to be made in pursuance of the General Assembly's decision.

<sup>1</sup> An administrative union exists between the Gold Coast and the Trust Territory of Togoland under British administration.

## 14. HUMAN RIGHTS IN NON-SELF-GOVERNING TERRITORIES

(a) *Information submitted under Article 73e of the Charter of the United Nations*

Under Article 73e of the Charter, Members of the United Nations which have or assume responsibilities for the administration of territories, other than Trust Territories, whose peoples have not yet attained a full measure of self-government have undertaken to transmit regularly to the Secretary-General, for information purposes, subject to such limitations as security and constitutional considerations may require, statistical and other information of a technical nature relating to economic, social and educational conditions in the territories.

Part III of the revised standard form approved by General Assembly resolution 551 (VI)<sup>1</sup> suggests that information be transmitted concerning, *inter alia*, the manner in which human rights, in accordance with the principles set forth in the Universal Declaration of Human Rights, are protected by law.

In resolution 846 (IX) the General Assembly took note of the report of its Committee on Information

from Non-Self-Governing Territories on the work of its 1954 session.<sup>2</sup>

In its resolution 848 (IX) the General Assembly reiterated its view that voluntary submission by Members administering Non-Self-Governing Territories of information on the political development of peoples in those territories was fully in accord with the spirit of Article 73 of the Charter, and, noting that some Members had not yet transmitted such information, invited the Members concerned to give the United Nations their utmost co-operation in this regard.

The General Assembly, in stating in its resolution 849 (IX) that it considered it appropriate that the transmission of information in respect of Greenland under Article 73e of the Charter should cease, took note of, *inter alia*, the fact that "when deciding on their new constitutional status, through their duly elected representatives, the people of Greenland have freely exercised their right to self-determination".

The General Assembly in resolution 850 (IX) expressed the opinion that communications from Members concerned relating to the cessation of transmission of information under Article 73e of

<sup>1</sup> See *Yearbook on Human Rights for 1951*, p. 609.

<sup>2</sup> *Official Records of the General Assembly, Ninth Session, Supplement No. 18.*

the Charter should be examined, as indicated in its resolution 742 (VIII),<sup>1</sup> with particular emphasis "on the manner in which the right of self-determination has been attained and freely exercised". The Assembly also considered that, where deemed desirable by the Assembly, and in order to evaluate as fully as possible the opinion of the population, a mission should, in agreement with the Member State administering the territory; visit that territory before or during the time when the population was to decide on its future status or change in status.

<sup>1</sup> Resolution entitled "Factors which should be taken into account in deciding whether a Territory is or is not a Territory whose people have not yet attained a full measure of self-government". See *Yearbook on Human Rights for 1953*, pp. 390-391.

(b) *Educational Advancement in Non-Self-Governing Territories*

The General Assembly in resolution 845 (IX) invited Member States to extend generously their offers of study and training facilities for inhabitants of Non-Self-Governing Territories, not only at the university level but, in the first place, at the post-primary level and in the technical and vocational fields. It also recommended that Members administering Non-Self-Governing Territories make the greatest possible use of facilities at all levels of education and training that may be offered by other Member States and invited them to give publicity to offers of study and training facilities, and to take such other measures as would ensure that the greatest possible advantage would be taken of the offers.

## 15. RACIAL SITUATION IN THE UNION OF SOUTH AFRICA

The General Assembly's Commission on the Racial Situation in the Union of South Africa held two sessions during 1954 and submitted a report (A/2719) to the General Assembly. In its resolution 820 (IX) the General Assembly, recalling its previous resolutions 103 (I), 395 (V) and 511 (VI), and the Commission's conclusion, submitted in its first report, that the racial policies of the Government of the Union of South Africa were contrary to the United Nations Charter and to the Universal Declaration of Human Rights; noting with apprehension the adoption of new laws and regulations by the Union Government which in the Commission's view were also incompatible with the Government's obligations under the Charter; and noting the Commission's conviction that the policy of *apartheid* constituted a grave threat

to the peaceful relations between ethnic groups in the world: noted with regret that the Union Government had again refused to co-operate with the Commission; invited that Government to reconsider its position in the light of the high principles expressed in the United Nations Charter, taking into account the pledge of all Member States to respect human rights and fundamental freedoms without distinction as to race, and further taking into account the valuable experience of other multi-racial societies as set forth in the Commission's report. It furthermore invited the Government to take into consideration the Commission's suggestions for a peaceful settlement of the racial problem, and requested the Commission to keep under review the problem of race conflict in the Union and to report to the Assembly's tenth session.



# INDEX

*Note:* Wherever certain constitutions affecting a relatively wide range of rights are mentioned in this index, the relevant article of the constitution in question is given in parentheses. Where any other text is involved, the reference is followed by (T) if it is quoted in whole or in part, by (S) if it is summarized and by (M) if it is only mentioned. In the case of a quotation, the reference is to the page where the text as a whole begins.

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- ASSOCIATION, Freedom of
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*Netherlands*

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*China*

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*Turkey*

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*Ruanda-Urundi*

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*Bulgaria*

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