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INFORMATION SUBMITTED IN ACCORDANCE WITH ECONOMIC AND SOCIAL COUNCIL
RESOLUTION 1159 (XLI) REGARDING CO-OPERATION WITH REGIONAL
INTERGOVERNMENTAL BODIES CONCERNED WITH HUMAN RIGHTS

Note by the Secretary-General

III. ACTIVITIES OF THE EUROPEAN COMMISSION OF HUMAN RIGHTS

A. Inter-State applications

From 15 November 1981 until 15 November 1982 the Commission examined on various occasions the state of proceedings in the case of Cyprus v. Turkey (No. 8007/77), the third inter-State application brought before the Commission concerning the situation in Cyprus, declared admissible in July 1978.

The Commission also considered questions of procedure regarding the applications brought on 1 July 1982 by Denmark, France, the Netherlands, Norway and Sweden v. Turkey referring to the situation in Turkey.

B. Individual applications

In the same period approximately 600 applications were registered and some 400 decisions on the admissibility taken.

The 38 following were declared admissible:

Conditions of detention

Z v. Italy (No. 9044/80)

The applicant, a prisoner serving a sentence of 21 years for manslaughter, complains that the refusal by the Italian authorities to grant him release on parole in order to receive the necessary medical treatment which his physical condition requires - he suffers from hereditary obesity and weighs approximately 170 kilos - constitutes inhuman treatment contrary to Art. 3 of the Convention.

A v. United Kingdom (No. 8231/78)

The admitted part of this application concerns various aspects of the applicant's a convicted prisoner - conditions of imprisonment, such as complaints relating to the restrictions on the choice and use of writing materials, the prohibition of their being sent out of the prison and their scrutiny during the applicant's detention and on

release, the applicant's access to the prison library and his ability to obtain newspapers and periodicals (Art. 10) and complaints regarding the interference with his correspondence (Art. 8). The Commission dismissed other complaints such as the requirement to perform prison labour, to wear prison clothes, removal from association, restriction on visits, food, harassment and a number of complaints relating to the conditions of his cell.

Lawfulness of detention

M. Zamir v. United Kingdom (No. 9174/80)

This application concerns the applicant's detention pending his removal from the United Kingdom as an illegal entrant. The applicant had made a complaint under Art. 5 (1) of the Convention namely a breach of his right to security of person, invoking the uncertainty in the law relating to the definition of an illegal entrant and the scope of the duty of disclosure. He further alleges the absence of a speedy judicial review of his detention in breach of Art. 5, para. 4 of the Convention.

van den Brink v. the Netherlands (No. 9242/81)

This application, which is identical to two other applications previously declared admissible by the Commission, concerns the detention ordered by military officers of conscript servicemen in the Netherlands Armed Forces who for reasons related to conscientious objection commits acts of insubordination and thus infringes the Military Penal Code. The complaints relate to the position of the "Auditeur-Militair" under the applicable legislation, in particular in the light of Art. 5, para. 3 of the Convention which requires that everyone upon arrest "shall be brought promptly before a judge or other officer authorized by law to exercise judicial power".

In three further admitted applications v. the Netherlands, (Nos. 9362/81, 9363/81 and 9387/81) the applicants' complaints under Art. 5, para. 3 also extend to the position of the "Officier-Commissaris" who has certain competences under the above legislation.

In two applications v. Sweden (Nos. 9017/80 and 8582/79, X and Skoogström) an issue arises under Art. 5, para. 3 of the Convention which requires that upon arrest everyone shall be brought promptly before a judicial officer, and in particular whether the authority which is competent under Swedish law (Code of Judicial Procedure to detain a person, namely the Public Prosecutor, can be regarded as fulfilling the requirement of Art. 5, para. 3 and, if not, whether the delays which elapsed after arrest and before the accused appeared before a judge could be considered as complying with the notion of "promptly" set out in that provision.

In three applications v. the United Kingdom (No. 7699/76, 9292/81 and 9117/80) the applicants were compulsorily detained under the Mental Health Act in a psychiatric hospital for an indefinite length of time. The applicants in Applications Nos. 7699/76 and 9117/80 complained that they had no possibility of recourse to a court of law to examine the justification of their detention which they considered to be in breach of Art. 5, para. 4 of the Convention. These applications raise similar issues to the case of X v. the United Kingdom upon which the European Court gave judgement on 5 November 1981 and in which it ruled that there was a breach of Art. 5, para. 4 of the Convention on this particular point. The applicant in Application No. 9292/81 complained of the delay of 17 weeks and 4 days which occurred in his application to the Mental Health Review Tribunal for discharge from the mental hospital where he was detained. He claims in particular that such a delay was in breach of the requirements of "speed" in the determination of the lawfulness of his detention pursuant to Art. 5, para. 4.

Fair trial

Bönish v. Austria (No. 9658/79)

The applicant complains that two criminal proceedings taken against him under the Food Act 1975 were conducted in violation of his right to a fair hearing under Art. 6, para. 1 of the Convention because an unjustifiedly dominant role was given in these proceedings to the Food Control Institute's expert whose initial reports had provided the basis for the prosecutions. The applicant further alleges that his minimum right as an accused "to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him" (Art. 6, para. 3 (d) of the Convention) has not been respected in the above proceedings.

Goddi v. Italy (No. 8966/80)

The applicant alleges violation of his rights of defence (Art. 6, paras. 1 and 3 (c) of the Convention) in criminal proceedings before the Court of Appeal of Bologna, which led to his conviction. He explained that he was not represented at the trial since he himself was detained in prison in Orvieto and that the summons for the trial had not been notified to the lawyer of his choice.

D v. Belgium (No. 9186/80)

The applicant complains that one of the judges participating in his trial had previously acted as an investigating judge in his case. In declaring the case admissible the Commission is mainly concerned with the question whether the investigating judge, on the mere ground that he had prepared the case, could or could not in advance have acquired a personal opinion on the guilt of the accused. If that were the case, it could not be excluded that the court, in which this particular magistrate sits, does not offer the guarantees of impartiality required by Art. 6, para. 1 of the Convention.

G. Colozza and P. Rubinat v. Italy (Nos. 9024/80 and 9317/81)

In these applications the applicants complain of a violation of the right to a fair hearing during criminal proceedings which have taken place in their absence and which led to their conviction, by default, to 6 and 21 years' imprisonment respectively. The question arises to what extent these proceedings by default met the requirements of Art. 6 of the Convention where the accused does not appear in person and cannot influence the way his defence is carried out, where his absence is presumed to be voluntary and, if he appears at a later stage, he can no longer claim that his case is dealt with in his presence.

Oztürk v. Federal Republic of Germany (No. 8544/79)

In this application the question arises whether the obligation for the applicant, a Turkish citizen, to pay the interpretation costs as imposed on him in the proceedings under the Contravention of Regulations Act (Ordnungswidrigkeitengesetz) for a road traffic violation was in breach of Art. 6, para. 3 (e) of the Convention which provides that "everyone charged with a criminal offence has the following minimum rights: ... to have the free assistance of an interpreter if he cannot understand or speak the language used in court".

Length of criminal proceedings

X v. United Kingdom (No. 8435/78)

In this application the Commission has considered the applicant's complaints concerning the length of the criminal proceedings in Northern Ireland relative to the alleged possession of a firearm and ammunition in suspicious circumstances which, he maintains, lasted an unreasonable time. The applicant complained in particular of being held on bail for four years.

Civil rights and obligations

(a) Hearings by a court

X v. Denmark (No. 8777/79)

The applicant complains that he is denied access to the Danish Courts to have the paternity of a child that his wife bore established, although there are valid reasons to believe that it is not his. The denial is based on the fact that the applicant did not institute affiliation proceedings within the time limit laid down by the Danish Act on Status of Children. The applicant points out that this time limit applies solely to the husband and to the wife and sees this as a discrimination.

X v. the Netherlands (No. 8948/80)

This application concerns administrative proceedings before the Crown following the withdrawal of a licence for the operation of a filling station under the Nuisance Act. The applicant submits that the Crown, being the highest administrative authority, cannot be considered as an independent and impartial tribunal within the meaning of Art. 6, para. 1 and that its decision is neither circumscribed by time limits nor publicly announced. The preliminary question which arises is whether Art. 6 is applicable and in particular whether the challenged decision was decisive for the applicant's civil rights and obligations.

Sramek v. Austria (No. 879 /79)

A similar question arises in an application directed versus Austria where the applicant complained of a procedure under the Tyrol Real Property Transactions Act whereby authorization of land acquisition by the applicant was refused by the Provincial Real Property Transactions Authority.

Bramelid and Malmstrom v. Sweden (Nos. 3588 and 3589/79)

The applicants, former shareholders in a company, complain of the application of a provision authorizing a company which owns more than 90 per cent of the share capital of another company to purchase the outstanding shares. The applicants consider that the proceedings before the three arbitrators under the Swedish Arbitration Act (Lag om Skiljemän) cannot be considered as complying with the requirements of Art. 6 of the Convention and, in particular, whether they offered the guarantees of independence and impartiality and whether the proceedings before them were fair and public, as required by this provision.

(b) Length of proceedings

Dores and Silveira v. Portugal (Nos. 9345/81 and 9346/81)
Guincho v. Portugal (No. 8990/80)

The first two applications concerned length of proceedings before the Lisbon Labour Court initiated in October 1977 and which at the time of the Commission's decision on admissibility - July 1982 - had not led to a final decision. The third application concerned the length of civil proceedings for damages before the Court of Vila Franca de Zira, initiated in December 1973 and having led to no final result on the date of the decision on admissibility by the Commission in December 1981.

Private Life

X v. the Netherlands (No. 8978/80)

This application concerns the fact that under Netherlands law no legal protection is offered against sexual abuse of mentally defective persons, where the victim is over 16 years and not placed under guardianship, but is proven to be incapable of determining her will as to the question of lodging a complaint.

Three applications v. United Kingdom (Nos. 9214/80, 9473/81 and 9474/81)

In these applications the applicants complain of the operation of Immigration Rules which came into force on 1 March 1980 in so far as they control the entry into the United Kingdom of foreign husbands. It is alleged that the regulations by which they are directly affected create unjustified differences of treatment of persons in similar circumstances based on (a) their sex, and (b) their race, national origin and nationality.

Freedom of association

Six applications v. United Kingdom (Nos. 8476-8481/79)

In these applications the applicants complained that their rights under the Convention have been violated by reason of the fact that the respondent Government had not secured to them their right to freedom of association and that they had no remedy against wrongful dismissal from employment with the Hull City Council. The applications raise questions similar to those considered in the so-called "closed shop" cases in which the European Court of Human Rights ruled on 13 August 1981 that the loss of work as a sanction for not joining specific trade unions constituted a breach of Art. 11 of the Convention.

Respect of property rights

Sequaris v. Belgium (No. 9676/82)

In this application an issue arises under Art. 1 of the First Protocol to the Convention, which guarantees with certain limitations to everyone the right to respect for his property. In the present case the applicant was awarded the sum of 2,000,000 Belgian Francs in a law suit against the State, but no payment has been made and the applicant has no way of enforcing the judgement.

During the same period, the Commission

- declared inadmissible 362 applications;
- requested information from Governments in respect of five applications (Art. 42, para. 2 (a) of the Rules of Procedure);
- gave notice to the respondent Government of 95 applications (Art. 42, para. 2 (b) of the Rules of Procedure);
- adopted eight reports on the merits of admitted cases (Art. 31) and four on friendly settlement (Art. 30);
- held 16 oral hearings on the admissibility and/or merits of applications before it.

Amongst the other activities of the Commission may be mentioned the Commission's deliberations on previously admitted cases, on the reference of cases to the European Court of Human Rights, on progress of friendly settlement negotiations and on the Commission's own Rules of Procedure and working methods.