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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

At its forty-first session, the Economic and Social Council adopted resolution 1159 (XLI) 1/ regarding co-operation with regional intergovernmental bodies concerned with human rights. Under the terms of this resolution, the Council, desiring to make use of all possible information and experience to advance the realization of human rights and fundamental freedoms for all without distinctions as to race, sex, colour or religion, *inter alia*, invited the Secretary-General to arrange for the exchange of information on matters relating to human rights between the Commission and the Council of Europe, the Inter-American Commission on Human Rights, the Organization of African Unity, the League of Arab States and other regional intergovernmental organizations particularly concerned with human rights.

The present note contains a communication received from the Council of Europe in response to the Secretary-General's request for information within the framework of the exchange provided for in the resolution.

1/ The resolution was adopted at the 1445th plenary meeting of the Council on 5 August 1966.

ACTIVITIES OF THE COUNCIL OF EUROPE IN THE FIELD OF HUMAN RIGHTS IN 1981

Introduction

At the request of the Secretary General of the United Nations made in accordance with the terms of ECOSOC Resolution 1159 (XLI) of 5 August 1966, the Council of Europe has prepared for the United Nations Commission for Human Rights annual communications about its work relating to human rights since 1968. The communication for 1968 was distributed to the Commission under reference E/CN.4/L.1042/Add.2. It followed the report of the C ouncil of Europe to the Teheran Conference (doc. A/CONF.32/L.9), which summarised the Council's work in this field up to the end of 1967. The communication for 1969 was distributed under the reference E/CN.4/L.1117/Add. 1, that for 1970 under the reference E/CN.4/L.1057/Add. 1, that for 1971 under the reference E/CN.4/L.1089/Add. 1, that for 1972 under the reference E/CN.4/1120, that for 1973 under the reference E/CN.4/1139, that for 1974 under the reference E/CN.4/1103, that for 1975 under the reference E/CN.4/1201, that for 1976 under the reference E/CN.4/1229, that for 1977 under the reference E/CN.4/1283, that for 1978 under the reference E/CN.4/1333, that for 1979 under the reference E/CN.4/1359 and that for 1980 under the reference E/CN.4/1450.

Following a further request from the Secretary General of the United Nations, the Council of Europe has prepared this further communication about its activities relating to human rights in 1981.

PART I

HUMAN RIGHTS

I. APPLICATION OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS AND ITS PROTOCOLS

Section 1 - Signatures, ratifications, declarations, etc.

In the period under reference, no new ratification to the European Convention has been deposited. Twenty member States of the Council of Europe had ratified by the end of 1981 the European Convention on Human Rights (1). Protocol No. 1 to the Convention had been signed by the same member States with the exception of Spain and Switzerland and Protocol No. 2 by the same member States with the exception of Spain.

On 1 July 1981 and 2 October 1981 Spain and France respectively made the declaration under Article 25 of the European Convention on Human Rights. The effect of these declarations is to recognise for two years for Spain and for five years for France the competence of the European Commission of Human Rights to receive individual petitions. At the end of 1981 therefore, the number of States having recognised such a competence is 16 (2). The same 16 States, as well as Cyprus and Greece, have recognised the compulsory jurisdiction of th European Court of Human Rights (Article 46 of the Convention).

By the end of 1981 Protocol No. 4 to the Convention, securing certain rights and freedoms other than those already included in the Convention and the First Protocol was in force among 11 States - Austria, Belgium, Denmark, France, the Federal Republic of Germany, Iceland, Ireland, Luxembourg, Norway, Portugal and Sweden. These governments have also extended their acceptance of the compulsory jurisdiction of the European Court of Human Rights to applications concerning the rights guaranteed in the Fourth Protocol as well as their acceptance of the right of individual petition.

The European Agreement relating to persons participating in proceedings of the European Commission and Court of Human Rights, which entered into force on 17 April 1971, had been ratified, by the end of 1981, by 13 States (Belgium, Cyprus, the Federal Republic of Germany, Ireland, Italy, Luxembourg, Malta, Netherlands, Norway, Portugal, Sweden, Switzerland and the United Kingdom).

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(1) Austria, Belgium, Cyprus, Denmark, France, Federal Republic of Germany, Greece, Iceland, Ireland, Italy, Luxembourg, Malta, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey and the United Kingdom.

(2) Austria, Belgium, Denmark, France, Federal Republic of Germany, Iceland, Ireland, Italy, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, United Kingdom (including 16 overseas territories).

II. Activities of the European Commission of Human Rights

A. Inter-State applications

From 15 November 1980 until 15 November 1981 the Commission examined on 4 occasions the state of proceedings in the case Cyprus v. Turkey, the third inter-State application brought before the Commission concerning the situation in Cyprus, declared admissible in July 1978.

B. Individual applications

In the same period 400 individual applications were registered and 358 decisions on the admissibility taken by the Commission. The 16 following cases were declared admissible:

DETAINED PERSONS

1. McFeeley et al v. the United Kingdom (No. 8317/78)

This case was brought by Mr. T. McFeeley and three other persons convicted of scheduled "terrorist-type" offences under the law of Northern Ireland as defined in the Northern Ireland (Emergency Provisions) Act 1978 and serving their sentences at H.M. Prison, The Maze.

The application concerned various aspects of their treatment by the prison authorities and their prison conditions.

In a partial decision the Commission has rejected the applicants' complaint that the requirement to wear a prison uniform and to work despite their beliefs that they were political prisoners violated their freedom of belief and conscience (Art. 9) as being incompatible with the provisions of the Convention, finding that the right to such a preferential status for a certain category of prisoners is not amongst the rights guaranteed by the Convention. The Commission had also found that the Government in imposing on the applicants continuous and cumultative sanctions was not in breach of its obligations under Art. 3.

However the remaining complaints of the applicant under Art. 8 concerning censorship of their correspondence and Art. 13 concerning the availability of an effective remedy under Northern Irish law were declared admissible.

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2. Kröcher and Möller v. Switzerland (No. 8463/78)

These applicants, of German nationality, were arrested in December 1977 and detained on remand on charges of attempted murder until November 1978 on which date they were convicted.

The Commission declared admissible the applicants complaint under Art. 3 of the Convention in that they have alleged having been subjected to extremely rigorous conditions of imprisonemnt, and in particular that they were kept in complete solitary confinement, including sensory deprivation and social isolation, which has had a seriously detrimental effect on their state of health.

3. Fell v. the United Kingdom (No. 7878/77)

The applicant had been involved in an incident at Albany Prison in September 1976 when prison officers intervened to end a protest by six prisoners, and had on that occasion sustained injuries. He was then charged with (incitement to) mutiny and gross personal violence to an officer. He was awarded 570 days loss of remission and 91 days of cellular confinement by the Board of Visitors.

The applicant's admitted complaints concern his access to legal advice, medical examination and to court (issues under Arts. 6, 8 and 13 of the Convention), inter alia by virtue of the internal ventilation rule.

FORCED OR COMPULSORY LABOUR

4. X. v. Belgium (No. 8919/80)

This application concerns complaints to the Commission from a Belgian lawyer concerning his obligation under the Belgian system of free legal aid, to act as unpaid defence counsel in criminal cases. He considers that this constitutes "forced or compulsory labour" within the meaning of Art. 4 (2) of the Convention.

LAWFULNESS OF DETENTION

5. de Jong and Baljet v. the Netherlands (No. 8805/79 and 8806/79)

These applicants, conscript servicemen in the Netherlands Armed Forces, had been subject to criminal proceedings pending the outcome of their request to be granted the status of conscientious objectors. They

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were remanded in custody by order of the commanding officer. Criminal proceedings were suspended when their request for conscientious objectors was granted.

The application concerns mainly the delay within which the applicants were brought before "an officer authorised by law to exercise judicial power" (Art. 5, para. 3 of the Convention), since they allege that the "Auditeur-Militair" before whom they appeared 6 and 11 days respectively after their arrest could not be regarded as such.

6. D. v. the United Kingdom (No. 7090/75)

This application concerns the right to a periodic judicial review of the substantive justification for continued detention under the Mental Health Act 1959. A similar issue was involved in the case of X. v. the United Kingdom brought before the European Court of Human Rights (1).

7. Luberti v. Italy (No. 9019/80)

This applicant, charged with murder, was acquitted on appeal in November 1979 owing to his diminished responsibility at the time of the crime, but ordered to be detained in a psychiatric hospital for two years.

This detention was terminated when the judge established in June 1981 that criminologically and psychologically the applicant was no longer dangerous.

The cases raises issues under Art. 5 of the Convention in that the applicant maintains that his detention was not justified by his mental state or any social danger. He equally complains of the length of proceedings for obtaining his release.

LENGTH OF PROCEEDINGS

8. Zimmermann and Steiner v. Switzerland (No. 8737/79)

This application concerns the length of proceedings concerning the applicants' compensation claim before the Swiss Federal Court and

9. Kofler v. Italy (No. 8261/78)

concerns the length of criminal proceedings instituted against the applicant, accused of having bombed the barracks of the financial police at Malga Sasso/ Steinalm near the Brennero /Brenner Pass in 1969.

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(1) Judgment delivered on 5 November 1981.

10. Pakelli v. the Federal Republic of Germany (No. 8398/78)

This applicant, a Turkish citizen, had been convicted by the Regional Court of Heidelberg on charges of offences against the narcotics act and of tax evasion. He was defended during the trial by a defence counsel assigned to him. The Federal Court (Bundesgerichtshof) refused however his request for the appointment of an official dfence counsel for the hearing of his appeal on points of law (Revision) considering that it was the Federal Court's duty to review the judgment of the Regional Court on the basis of the written grounds of appeal.

11. Temeltasch v. Switzerland (No. 9116/80)

This application concerns the right of an accused person, who cannot understand or speak the language used in court, to have the free assistance of an interpreter (Art. 6 (3) (e) of the Convention) and the declaration made by Switzerland when ratifying the Convention that it interprets this guarantee as not permanently absolving the beneficiary from payment of the resulting costs.

12. Minelli v. Switzerland (No. 8660/79)

The applicant, a journalist, was cited in 1972 by way of a private prosecution for defamation. The conduct of this prosecution was delayed for several years awaiting the outcome of another case relating to similar facts.

In 1976 the Court decided not to accept the action on the ground that it had become statute barred. The applicant was however ordered to pay part of the costs of the investigation proceedings as well as damages.

The applicant raises an issue under Art. 6 (2) of the Convention which guarantees the presumption of innocence to all accused persons.

13. X. v. Austria (No. 8490/79)

The Commission admitted the applicant's complaints that his conviction included a charge of which he had not been informed previously and that, in respect of another offence, it was based on an extensive interpretation of the criminal provision concerned. The application raises issues both under Art. 6, which guarantees the right to a fair trial as well as Art. 7 of the Convention, which guarantees the principle "nulla poena sine lege".

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PRIVATE LIFE

14. Malone v. the United Kingdom (No. 8691/79)

This case concerns the law and practice relating to the interception of telephone and postal communications in England and Wales for the prevention and detection of crime. The applicant, previously acquitted of a criminal offence, believes that since about 1971 he has been kept under police surveillance.

The application raises issues under Art. 8 and Art. 13 of the Convention.

FREEDOM OF CORRESPONDENCE

15. C. v. the United Kingdom (No. 7990/77)

The applicant, employed in a private firm under a pre-release employment scheme, was returned to prison on request of his employer after an incident. An Industrial Tribunal subsequently found that the employer's conduct amounted to dismissal and that the reason for the dismissal had been the applicant's trade union activity in the firm and was therefore found to be unfair and the applicant was granted compensation.

The applicant's admitted complaints concern alleged interferences by the prison authorities with his correspondence with a Member of Parliament and a Trade Union Representative, and thus raises issues under Art. 8 of the Convention.

FREEDOM OF EXPRESSION

16. Barthold v. the Federal Republic of Germany (No. 8734/79)

The applicant, a veterinary surgeon, in an interview to a newspaper had stated that his veterinary clinic provided a night service on a voluntary basis and expressed the view that a regular night service should be established. An association to fight against unfair competition brought a court action against the applicant for unfair competition. The claim was sustained by the civil court and an injunction was issued against the applicant prohibiting him from repeating the above statements.

The application raises issues under Art. 10 of the Convention.

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During the same period, the Commission

- declared inadmissible 342 applications
- struck off its list 40 applications
- gave notice to the respondent Government of 99 applications (Art. 42 (2) (b) of the Rules of Procedure)
- requested information from Governments in respect of 4 applications (Art. 42 (2) (a) of the Rules of Procedure)
- adopted 10 reports on the merits of admitted cases (Art. 31) and 1 on a friendly settlement (Art. 30)
- held 17 oral hearings on the admissibility and/or merits of applications brought before it.

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

III. Activities of the European Court of Human Rights

During the period of reference the European Court of Human Rights has delivered various judgments:

1. On 13 May 1980 the European Court of Human Rights delivered a judgment on the "Artico" case which concerns Italy.

In 1965 and 1970, prison sentences were imposed by the Verona district judge on the applicant for various offences. The Verona Criminal Court upheld the sentences on appeal and subsequent applications by Mr Artico to the court of cassation to quash the appeal decisions were dismissed in November 1973.

Free legal assistance had been granted to Mr Artico in August 1972 for the purposes of the applications to the court of cassation. However, in September, the officially appointed lawyer advised the applicant that he was unable to act in view of other commitments. Thereafter Mr Artico made numerous representations to the President of the relevant section and the Senior President of the court of cassation and to the public prosecutor attached to that court, requesting the nomination of a replacement lawyer and alleging a violation of the rights of the defence. However, no substitute was ever appointed and no steps were taken to oblige the original lawyer to carry out his duties.

In 1975, following a further appeal by the applicant, the criminal court's decisions were quashed in part by the court of cassation. The judgment was based on the issue of statutory limitation which he had already pleaded in support of the earlier applications to quash.

Shortly afterwards, Mr Artico was released from prison; the one year and 16 days which he had unduly spent in detention were subsequently set off against other sentences.

In his application of 26 April 1974 to the Commission, Mr Artico alleged violations of:

- Article 5 § 1 of the Convention, by reason of unlawful detention;
- Article 6 § 3 (c), by reason of the fact that he was not assisted by a lawyer before the court of cassation in the proceedings that terminated in November 1973.

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In its report of 8 March 1979, the Commission expressed the unanimous opinion that there had been a violation of Article 6 § 3 (c); it had previously declared the Article 5 § 1 complaint inadmissible for failure to exhaust domestic remedies.

Before the Court the Italian Government argued that, for various reasons, the Commission should not have declared the complaint concerning the absence of legal assistance to be admissible.

The Court held unanimously that the government were precluded from relying on these objections since one had not been raised at all before the Commission and the other two had not been raised at the proper time.

The Court firstly rejected the government's argument that the requirements of this Article had been satisfied simply by the nomination of a lawyer for legal aid purposes. It is effective assistance which is guaranteed by the Convention and this is not ensured by the mere appointment of a lawyer: in certain circumstances, the authorities must either replace him or cause him to fulfil his obligations. In the present case, Mr Artico had not received effective assistance before the court of cassation.

Under Article 6 § 3 (c), free legal aid has to be provided only if the interests of justice so require. Contrary to the government's submission, the Court found this condition to be satisfied in this case: a qualified lawyer could, in particular, have emphasised the issue of statutory limitation. In any event, it was not necessary to prove that absence of legal assistance had caused actual prejudice in order to establish a violation of Article 6 § 3 (c).

After rejecting certain criticisms of Mr Artico's conduct in the court of cassation proceedings, the Court pointed out that a State cannot be held responsible for every shortcoming on the part of a lawyer appointed for legal aid purposes; however, in the present case the Convention called for positive action on the part of the Italian authorities who should either have replaced the original lawyer or caused him to fulfil his obligations.

The Court accordingly concluded unanimously that there had been a breach of Article 6 § 3 (c).

Mr Artico had firstly claimed compensation in respect of fees for services rendered by the lawyer who had represented him during the Commission and Court proceedings. However, he had had the benefit of free legal aid in those proceedings and had not maintained that he had paid or was liable to pay additional fees. The Court accordingly held that, in this respect, he had suffered no loss capable of being compensated.

Mr Artico had also claimed just satisfaction for his unlawful detention. The Court noted that he alleged no pecuniary loss in this connection but that the additional period of imprisonment brought about indirectly by the absence of effective legal assistance had undoubtedly caused non-pecuniary injury; the latter, however, had been largely compensated by the setting-off of the undue detention against other sentences. In addition, the Court accepted that the violation of Article 6 § 3 (c) had itself caused non-pecuniary injury in the shape of a feeling of neglect and defencelessness.

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Accordingly, the Court concluded unanimously that the Italian Republic had to pay to the applicant compensation assessed on an equitable basis at Lire 3,000,000.

2. On 6 November 1980, the European Court of Human Rights delivered judgment on the Van Oosterwijck case which concerns Belgium.

Between 1969 and 1973, the applicant, who is a Belgian national born in 1944, underwent hormone therapy and sex-change surgery: although possessing the characteristics of the female sex, he had for a long time experienced the firm conviction of belonging to the male sex. He subsequently filed a petition for rectification of the entries concerning his sex on the civil status register, but his action was dismissed by the court of first instance; on 7 May 1974 the Brussels Court of Appeal upheld the lower court's decision, stating in particular that there was no provision in Belgian law that allowed account to be taken of artificial changes to an individual's anatomy, even if they corresponded to his deep-seated psychical tendencies.

D. Van Oosterwijck has not, until now, sought authorisation to change his forenames; he has an identity card bearing his female forenames but with a photograph corresponding to his present outward appearance.

The proceedings began in September 1976 with an application lodged by D. Van Oosterwijck with the European Commission of Human Rights. He invoked Article 3 of the Convention on the ground that his situation was one of "civil death" and was inhuman and degrading, Article 8 in that the application of the law obliged him to use documents which did not reflect his real identity, and Article 12 since, by maintaining a distortion between his legal being and his physical being, the contested court decisions prevented his marrying and founding a family.

In its report of 1 March 1979, the Commission expressed the opinion:

- unanimously, that, in breach of Article 8, there had been failure to recognise the respect due to the applicant's private life;

- by seven votes to three, that Belgium had failed to recognise D. Van Oosterwijck's right to marry and to found a family within the meaning of Article 12;

- unanimously, that is was not necessary, having regard to the foregoing conclusions, to proceed with an examination of the issues under Article 3.

The Belgian Government and the Commission referred the case to the Court on 22 June and 16 July 1979 respectively.

Before the Court the Belgian Government argued, inter alia, that the Commission should have declared the application inadmissible for non-exhaustion of domestic remedies (see Article 26 of the Convention). They objected that D. Van Oosterwijck had not appealed on a point of law to the court of cassation, had not pleaded the Convention either at first instance or on appeal, had not sought authorisation to change his forenames pursuant to the Act of 2 July 1974, and had not instituted an action d'état (an action pertaining to personal status).

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The judgment examined whether each of these objections was well-founded.

The Court considered, as did the Commission, that a change of forenames would not really have solved D. Van Oosterwijck's problems, as "he would have succeeded only in eliminating some of the consequences of the wrong of which he complained but not in eradicating either its cause, namely the respondent State's non-recognition of his sexual identity, or its social consequences".

The Court firstly pointed out that the judgment by the Brussels Court of Appeal was grounded not only on points of fact but also, as a separate matter, on points of law. The Court further noted that when construing the same legal texts other Belgian courts had arrived at divergent conclusions; "there /was/ thus nothing to show that an appeal to the court of cassation on grounds of the national legislation stricto sensu would have been obviously futile".

The Court then stressed the fact that in his own country the applicant had not even pleaded in substance the complaints he later made in Strasbourg. Before the Belgian courts he relied neither on the Convention, which nonetheless forms an integral part of the Belgian legal system where it has primacy over domestic legislation, whether earlier or subsequent, nor on any other plea to the same or like effect. "He thereby denied the Belgian courts precisely that opportunity which the rule of exhaustion is designed in principle to afford to States, namely the opportunity to put right the violations alleged against them."

According to the Court, an action d'état, which is a recognised means in Belgian law of establishing, modifying or extinguishing personal status, would have allowed D.Van Oosterwijck not only to plead the Convention but also to procure a prior adjudication by the courts of his own country on the issue involved and to set this issue in its proper dimensions from the very outset. It is for those courts to determine, should the occasion arise, whether the action d'état is still available to the applicant.

However, in the absence of any decided cases in Belgium on this point, no blame could be attached to him for having omitted up till now to bring such an action.

Having found no special grounds capable of dispensing the applicant from exercising the remedies taken into consideration, the Court held, by 13 votes to four, that by reason of the failure to exhaust domestic remedies it was unable to take cognisance of the merits of the case.

3. On 6 November 1980, the European Court of Human Rights delivered judgment on the award of "just satisfaction" (Article 50) in the "Sunday Times" case which concerns the United Kingdom.

By judgment of 26 April 1979, the Court held that there had been a violation of Article 10 of the Convention by reason of an injunction, granted in accordance with the English law of contempt of court, restraining the publication in The Sunday Times of an article tracing the history of the testing, manufacture and marketing of the drug "thalidomide".

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The Court reserved the question of a claim by the applicants - the publisher, the editor and a group of journalists of that newspaper - that, in application of Article 50, the United Kingdom Government should pay to them a sum equivalent to the applicants' costs and expenses incidental to the contempt litigation in England and the proceedings before the European Commission and the European Court of Human Rights. The Court was informed in July 1979 that no settlement had been arrived at between the government and the applicants. In April 1980, after written pleadings had been filed, the Court decided that there was no call to hold oral hearings.

The Court agreed with the government that an award of costs under Article 50 was not automatic but a matter for the Court's discretion. However, it rejected a submission that its finding of a violation of the Convention of *itself constituted just satisfaction of the applicants' claim. After reviewing* certain special features of the case relied on by the government, the Court concluded that it did not perceive circumstances such as to warrant a departure from its general practice of accepting claims in respect of costs necessarily incurred by a successful applicant.

The costs of the litigation in England had been the subject of correspondence between the parties and then of an agreed order of the House of Lords that each party should pay their own costs. The government submitted that to award the applicants the sum of £15,809.36 which they claimed in respect of their costs in that litigation would be contrary to an express agreement which they had entered into with the attorney general. The applicants contended that that agreement concerned solely the attorney general's costs but the Court considered more plausible the government's view that it related to the applicants' costs as well. The Court concluded unanimously that, even if proceedings in Strasbourg had not been contemplated by the parties at the relevant time, the consequence of the agreement was that it was not appropriate to include the applicants' costs in the English proceedings in any award under Article 50.

The applicants claimed £27,760.53 in respect of their costs in the proceedings before the Commission and the Court. After examining the various items in detail, the Court held by 13 votes to three that the applicants should be awarded £22,626.78 to cover expenses which, for the purposes of Article 50, it regarded as actually and necessarily incurred and reasonable as to quantum. Following its decision in the König case (10 March 1980), the Court rejected a government submission that any award to the applicants (who had not received legal aid) should be calculated by reference to the rates payable under the free legal aid scheme operated by the Commission.

4. On 6 November 1980 the European Court of Human Rights delivered judgment in the "Guzzardi" case which concerns Italy.

In February 1973, Mr Guzzardi, who was born in 1942 and lived in Lombardy, was placed in detention on remand and charged with conspiracy and being an accomplice to the kidnapping of a businessman who had been freed after payment of a substantial ransom. He was acquitted in November 1976 by the Milan Regional Court for lack of sufficient evidence, but convicted in December 1979 by the Milan Court of Appeal which sentenced him to 18 years' imprisonment and a fine.

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In January 1975, Mr Guzzardi, who could not in law be detained on remand for more than two years, was subjected to an order for compulsory residence for three years at Cala Reale on the island of Asinara, which lies off Sardinia. This measure was unconnected in law with the criminal proceedings in progress and was based on an Act of 1956 on "persons presenting a danger for security and public morality" and an Act of 1965 directed against the mafia. The order, which was made by the Milan Regional Court, was confirmed by the Milan Court of Appeal and then by the court of cassation. However, in July 1976 the Milan Regional Court decided that Mr Guzzardi should be transferred to a district on the Italian mainland; he remained there, subject to a similar order, until February 1978.

The case originated in an application, lodged with the Commission in November 1975, in which Mr Guzzardi made various complaints about his situation on Asinara. He maintained that his living conditions were contrary to Article 3 of the Convention (protection against inhuman or degrading treatment or punishment) and objected that on the island he could neither live permanently with his family (Article 8) nor manifest his religion in worship (Article 9). The Commission having decided to take into consideration on its own initiative Articles 5 and 6 (right to liberty and security of person and right to a fair trial, respectively), the applicant subsequently relied on these provisions as well.

In its report of 7 December 1978, the Commission expressed the opinion:

- unanimously, that there had been a violation of Article 5 § 1, the order for the applicant's compulsory residence at Cala Reale having constituted a deprivation of liberty that corresponded to none of the eventualities mentioned in that provision;

- unanimously, that Article 6 was not applicable to the proceedings which terminated in the applicant's being subjected to the measure in question;

- unanimously, that there had been no violation either of Article 3 or Article 9;

- by 11 votes, with one abstention, that there had been no violation of Article 8.

The Commission referred the case to the Court on 8 March 1979.

Before the Court the Italian Government argued that the Commission had been wrong to take Articles 5 and 6 into consideration on its own initiative. The Court, by 16 votes to two, did not sustain this objection; an applicant was not obliged to specify which Article or right he was invoking and examination of the material before the Court clearly showed that the case raised an issue under Article 5.

The Court rejected by 10 votes to eight the government's objection that, before applying to the Commission, Mr Guzzardi had not exhausted domestic remedies (Article 26 of the Convention). The Court found, amongst other things, that the applicant had raised in substance before the Italian courts the issue of an infringement of his physical liberty.

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The Government claimed that, since Mr Guzzardi had been transferred in 1976 to the mainland and since Asinara was no longer used as a place for compulsory residence, the proceedings had lost their object. This submission was rejected by 15 votes to three: the fact that an alleged breach might have ceased did not prevent the Court from rendering a declaratory judgment thereon the transfer had not been motivated by reasons derived from the Convention, and important issues of interpretation remained for decision.

The Court stressed from the outset that it was not reviewing the system instituted by the Italian Acts of 1956 and 1965, but solely the manner in which those Acts had been applied to Mr Guzzardi, namely the conditions surrounding his enforced stay on Asinara.

The government contended that, although there had been restrictions on Mr Guzzardi's freedom of movement, he had not been "deprived of his liberty" within the meaning of Article 5. The Court noted, amongst other things, that the applicant spent more than 16 months on Asinara, almost exclusively in the company of persons subjected to the same measure and of policemen; during that time, his movements were restricted to a tiny fraction of the island, he had few opportunities for social contacts and he was subject to almost constant supervision. Taking these and other factors cumulatively and in combination, the Court concluded by 11 votes to seven that there had been "deprivation of liberty".

The government's alternative plea that the deprivation of liberty was justified under sub-paragraph (e) of Article 5 § 1 was rejected unanimously. The Court pointed out that Mr Guzzardi was not a "vagrant" in the ordinary sense of the term and had not been treated as such by the authorities; furthermore, the fact that that sub-paragraph authorised the detention of vagrants did not mean that it impliedly authorised the detention of more dangerous persons.

The Court also concluded by various majorities that the deprivation of liberty was not justified under the other sub-paragraphs of Article 5 § 1, which had not been pleaded by the Government.

Mr Guzzardi had therefore been the victim of a breach of Article 5 § 1 whilst on Asinara (10 votes to eight).

Mr Guzzardi claimed "compensation for the prejudice suffered", "of an amount to be determined equitably". Having regard to all the circumstances of the case, the Court afforded him under Article 50 a sum of Lire 1,000,000 (12 votes to 6).

5. On 6 May 1981 the European Court of Human Rights delivered judgment on the "Buchholz" case which concerns the Federal Republic of Germany.

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Mr. Buchholz was born in 1918 and lives in Hamburg. From 1949 onwards he worked for a dry-cleaning firm. On 10 July 1974, he brought an action before the Hamburg Labour Court challenging a dismissal notice sent to him on 28 June by his employer. Two further notices followed on 30 September. By decision of 8 January 1975, the Labour Court upheld the applicant's claim; whereupon, on 11 March 1975, the employer entered an appeal. On 3 February 1978, the Labour Court of Appeal reversed the lower court's judgment and found against the applicant. During the appeal proceedings several hearings had taken place, witnesses had been examined and expert evidence obtained.

In the meantime Mr. Buchholz had applied to the Federal Constitutional Court complaining of the length of the proceedings in his case; his application was rejected on 2 November 1976.

By decision of 26 April 1979, the Federal Labour Court dismissed his petition for a review on a point of law of the Court of Appeal's judgment. The Federal Constitutional Court, on 19 July 1979, refused to allow Mr. Buchholz's constitutional application against this latter decision to proceed.

The application was lodged with the Commission on 18 December 1976 and declared admissible on 7 December 1977.

The Commission then received the observations of the applicant and of the German Government on the merits of the case. Having ascertained the facts and attempted without success to achieve a friendly settlement of the case, the Commission drew up a report establishing the facts and stating its opinion as to whether the facts found disclosed a breach by the Federal Republic of Germany of its obligations under the European Convention on Human Rights. In the report the Commission concluded, by seven votes to six, that the "reasonable time" stipulated by Article 6 § 1 had been exceeded. It did not consider, on the other hand, that the case raised any issue under Articles 8, 3 or 12.

For the purposes of deciding whether the length of the proceedings brought by Mr. Buchholz before the German labour courts had exceeded the "reasonable time" provided for under Article 6 § 1, the Court had regard to the complexity of the case and to the conduct of both the applicant and the competent authorities. It also took account of the defendants' behaviour and of what was at stake in the litigation for the applicant. The Court then examined, on the basis of these criteria, the course of the proceedings before each of the three courts which were in turn called on to deal with the case.

In respect of the litigation before the Labour Court and the Federal Labour Court, the Court did not find an excessive delay such as to infringe Article 6 § 1.

As regards the duration of the proceedings before the Labour Court of Appeal (more than two years and nine months), the Court first stated its view that this could not be justified by the complexity of the case in itself. On the other hand, the Court concurred with the Government and the Commission that Mr. Buchholz had to a large extent contributed to the result, notably by the way in which he chose to argue his case. The Court nevertheless noted certain delays attributable

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to time-limits set by the Court of Appeal, but these delays "occurred at a time marked by a significant increase in the volume of litigation resulting from a deterioration in the general economic situation". As the competent authorities had taken remedial action to deal with this exceptional situation (for example, increasing the number of judicial posts as early as 1974, creating in 1976 a Sixth Chamber of the Hamburg Labour Court of Appeal), the Court took into account the amount of work which was pending before the Labour Court of Appeal during this period.

Having assessed the material before it and taken notice of the authorities' efforts to expedite the conduct of business before the labour courts, the Court considered that, even when taken cumulatively, the delays attributable to the competent courts had not exceeded a reasonable time within the meaning of Article 6 § 1 of the Convention.

6. On 23 June 1981 the European Court of Human Rights delivered judgment on the "Le Compte, Van Leuven and De Meyere" case which concerns Belgium.

(a) In June 1971, the West Flanders Provincial Council of the Ordre des médecins (Medical Association) ordered a three months' suspension of Dr. Le Compte's right to practise medicine; the ground was that he had publicised in the press the sanctions previously imposed on him by the disciplinary organs of the Ordre and his criticisms of those organs, such conduct constituting contempt of the Ordre. The sanction was confirmed in October 1972 by the Appeals Council of the Ordre, although it did not uphold the allegation of contempt. In May 1974, the Court of Cassation dismissed an appeal on a point of law brought against the Appeals Council's decision.

Since that time, a number of further proceedings have been instituted, both disciplinary, for the publicity given by the applicant to his dispute with the Ordre, and criminal, for his refusal to comply with the measures imposed by its Councils.

(b) In January 1973, Dr. Van Leuven and Dr. De Meyere were accused by several of their colleagues of breaches of the rules of professional conduct: it was alleged, in particular, that they had systematically limited their fees to the amounts reimbursed by the Social Security, even when on emergency duty, and had distributed without charge to private houses a fortnightly magazine which held general practitioners up to ridicule.

After hearing these two applicants, the East Flanders Provincial Council of the Ordre ordered a one month's suspension of their right to practise medicine. They then referred the matter to the Appeals Council of the Ordre, which reduced the period of suspension to fifteen days. Their appeal on a point of law to the Court of Cassation was dismissed in April 1975.

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The two applications were lodged with the Commission on 28 October 1974 and 21 October 1975, respectively; they were declared partially admissible on 6 October 1976 (Le Compte) and 10 March 1977 (Van Leuven and De Meyere).

On the latter date, the Commission ordered that the applications be joined; it then received the observations of the applicants and of the Belgian Government on the merits of the case and attempted without success to achieve a friendly settlement. The Commission subsequently drew up a report establishing the facts and stating its opinion as to whether they disclosed a breach by Belgium of its obligations under the Convention.

The Commission expressed the opinion that:

- there had been no breach of Article 11 § 1 since the Ordre des médecins does not constitute an "association" for the purposes of that Article (unanimously);

- Article 6 § 1 was applicable to the proceedings which led to the disciplinary measures imposed on the applicants (eight votes to three);

- Article 6 § 1 had been violated in that the applicants did not receive a "public hearing" (eight votes to three) before an "impartial tribunal" (seven votes to four).

In its judgment the Court examined first of all whether Article 6 § 1 was applicable to the whole or part of the proceedings before the Provincial and Appeals Councils, which are disciplinary organs, and subsequently before the Court of Cassation, a judicial body.

In the Court's opinion, the applicants' right to continue to exercise the medical profession, of which they were to be deprived temporarily by the suspension ordered, was directly in issue before the Appeals Council and the Court of Cassation. It is by means of contractual or quasi-contractual relationships with their clients or patients that medical practitioners in private practice, such as the applicants, avail themselves of that right and it constitutes a private right. Although the suspension complained of was temporary, it had impaired the right in question.

The Court thus concluded, by fifteen votes to five, that Dr. Le Compte, Dr. Van Leuven and Dr. De Meyere were entitled to have their case heard by "a tribunal" satisfying the conditions laid down in Article 6 § 1. It did not consider it indispensable to pursue this point as regards the Provincial Council, since Article 6 § 1 does not oblige the Contracting States to submit disputes over "civil rights and obligations" to a procedure conducted at each of its stages before "tribunals" meeting the Article's various requirements. On the other hand, once the applicants had appealed to the Appeals Council, that organ had to determine the dispute over the right in question.

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The Court considered it superfluous to determine whether the organs of the Ordre des médecins had been required to determine criminal charges.

The Court then established whether in the exercise of their jurisdiction both the Appeals Council and the Court of Cassation met the conditions laid down by Article 6 § 1, the former because it alone fully examined measures affecting a civil right and the latter because it conducted a final review of the lawfulness of those measures.

Although the jurisdiction of the Court of Cassation did not extend to rectifying factual errors or examining whether the sanction was proportionate to the fault, that Court obviously had the characteristics of a "tribunal", within the meaning of Article 6 § 1. The same applied to the Appeals Council, subject to the points mentioned below.

Furthermore, it was clear that both the Court of Cassation and the Appeals Council were established "by law" (the Constitution, and an Act of Parliament and Royal Decrees, respectively).

There could be no doubt as to the independence either of the Court of Cassation or of the Appeals Council; the latter was composed of exactly the same number of medical practitioners and members of the judiciary and one of the latter, designated by the Crown, always acted as Chairman and had a casting vote.

Again, there was no problem as regards the impartiality of the Court of Cassation. As for the Appeals Council, the Court considered that the method of election of the medical members by the Provincial Council did not suffice to bear out a charge of bias and that the personal impartiality of each member had to be presumed until there was proof to the contrary; in fact, none of the applicants had exercised his right of challenge.

Finally, the Court considered the exclusion of all publicity before the Appeals Council, for both the hearings and the pronouncement of the decision. The Court found that none of the exceptions, provided for in Article 6 § 1, to the rule requiring publicity could have applied in the present case since the very nature both of the misconduct alleged against the applicants and of their own complaints was not concerned with the medical treatment of their patients: neither matters of professional secrecy nor protection of the private life of these doctors themselves or of patients were involved. Accordingly, the applicants were entitled to have the proceedings conducted in public, although neither the letter nor the spirit of Article 6 § 1 would have prevented them from waiving this right of their own free will, whether expressly or tacitly.

The Court added that the public character of the proceedings before the Court of Cassation did not suffice to remedy this defect: that body did not take cognisance of the merits of cases, with the result that numerous issues arising in disputes concerning "civil rights and obligations" fell outside its jurisdiction. The Court concluded, by sixteen votes to four, that there had been a breach of Article 6 § 1 in that the applicants' case had not been heard publicly by a tribunal competent to determine all the aspects of the matter.

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The Court noted firstly that the Belgian Ordre des médecins was a public-law institution, founded by the legislature and integrated within the structures of the State; it exercised a form of public control over the practice of medicine and was invested with prerogatives out of the orbit of the ordinary law. Having regard to these factors taken together, the Court was of the opinion that the Ordre could not be considered as an association.

The Court then observed that the existence of the Ordre and its attendant consequence - the obligation on practitioners to be entered on its register and to be subject to the authority of its organs - had neither the object nor the effect of limiting the right guaranteed by Article 11 § 1; in fact, there existed in Belgium several associations formed to protect the professional interests of medical practitioners and which they were completely free to join or not.

The Court thus concluded unanimously that there had been no violation of Article 11.

The question of affording "just satisfaction" to the applicants, which was found not to be ready for decision, was reserved and referred back to the Chamber originally constituted to examine the case and which had relinquished jurisdiction in favour of the plenary Court in 1980.

7. On 13 August 1981 the European Court of Human Rights delivered judgment on the "Young, James and Webster" case which concerns the United Kingdom.

In 1975, the applicants were employees of British Rail. During the course of that year, a closed shop agreement was concluded between their employers and three trade unions, providing that thenceforth membership of one of those unions was a condition of employment. The applicants declined to satisfy this condition and were dismissed on that account in 1976. Each of them considered that the individual should enjoy freedom of choice as regards union membership; in addition, Mr. Young and Mr. Webster objected to trade union policies and activities and Mr. Young to the political affiliations of the unions concerned.

At the time of the applicants' dismissal, the Trade Union and Labour Relations Act 1974, as amended in 1976, provided that the dismissal of an employee for refusal to join a trade union in a closed shop situation was to be regarded as fair, unless the employee genuinely objected on grounds of religious belief to being a member of any union whatsoever. Since the grounds on which the applicants declined to comply with the membership requirement did not fall into this latter category, the remedies for unfair dismissal (compensation and, in certain circumstances, re-engagement or reinstatement) were not available to them.

The case originated in applications, lodged with the Commission in July 1976 and February 1977, in which Mr. Young, Mr. James and Mr. Webster submitted that the enforcement of the 1974 Act, as amended, allowing their dismissal when they objected on reasonable grounds to joining a trade union, interfered with their freedom of thought and conscience (Article 9 of the Convention), freedom of expression (Article 10) and freedom of association with others (Article 11). They further complained that no adequate remedies had been available to them (Article 13).

In its report of 14 December 1979, the Commission expressed the opinion:

- by fourteen votes to three, that there had been a violation of Article 11;
- that it was not necessary to deal separately with the issues arising under Articles 9 and 10;
- by eight votes to two, with two abstentions, that there was no additional breach of Article 13.

The Commission referred the case to the Court on 14 May 1980.

1. In its judgment the Court emphasised that in the present case it did not have to review the closed shop system as such in relation to the Convention; it was examining solely the effects of that system on Mr. Young, Mr. James and Mr. Webster.

2. The United Kingdom Government had argued that Article 11 did not guarantee any right not to be compelled to join an association, such a right having been deliberately excluded when the Convention was being drafted.

The Court was of the opinion that, even if no general rule against compulsory membership were contained in the Convention, it did not follow that each and every compulsion to join a particular trade union was compatible with Article 11, for this would strike at the very substance of the freedom the Article was designed to guarantee. A threat of dismissal involving loss of livelihood was a most serious form of compulsion and, in the present case, had been directed against employees engaged before the introduction of any obligation to join a particular union. In the circumstances, such a form of compulsion struck at the very substance of the freedom guaranteed by Article 11 and, for that reason alone, there had been an interference with that freedom. Since Mr. Young, Mr. James and Mr. Webster would anyway have been dismissed if they had not become members of one of the specified unions, the fact that they might have been able to form or to join an additional union of their choice (a point that was contested before the Court) in no way altered the compulsion to which they were subjected.

Moreover, Article 11 had, in the present case, also to be considered in the light of Articles 9 and 10. The protection of personal opinion afforded by the latter Articles in the shape of freedom of thought, conscience and religion and of freedom of expression was also one of the purposes of freedom of association as guaranteed by Article 11. Accordingly, it struck at the very substance of that Article to exert pressure, of the kind applied to the applicants, in order to compel someone to join an association contrary to his convictions. In that further respect, there had been - in any event as regards Mr. Young and Mr. Webster - an interference with their Article 11 rights.

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3. The Government had expressly stated that they would not argue that any interference found by the Court was justified under paragraph 2 of Article 11. The Court examined this issue of its own motion. The closed shop system as such not being under review, the Court did not comment on its alleged advantages; it concentrated on the question whether the treatment of the applicants in this particular case was "necessary in a democratic society ... for the protection of the rights and freedoms of others". Having noted, amongst other things, that many closed shop arrangements did not require existing non-union employees to join a specified union, that there were statistics to the effect that a majority of union members did not agree that persons refusing to join a union for strong reasons should be dismissed from employment and that in 1975 more than 95% of British Rail employees already belonged to one of the specified unions, the Court found that the railway unions would in no way have been prevented from striving for the protection of their members' interests even if the legislation in force had not made it permissible to compel non-union employees having objections like the applicants to join a specified union. Since the detriment suffered by Mr. Young, Mr. James and Mr. Webster went further than was required to achieve a proper balance between the conflicting interests of those involved and could not be regarded as proportionate to the aims being pursued, the Court concluded by eighteen votes to three that there had been a violation of Article 11.

The Court held unanimously that it was not necessary also to examine the case under Articles 9 or 10, or to determine whether there had in addition been a violation of Article 13.

The applicants had claimed just satisfaction in respect of various losses and expenses. This question was found not to be ready for decision; it was reserved and referred back to the Chamber originally constituted to examine the case and which had relinquished jurisdiction in favour of the plenary Court in 1980.

8. On 22 October 1981 the European Court of Human Rights delivered judgment on the "Dudgeon" case which concerns the United Kingdom.

In Northern Ireland, under the Offences against the Person Act 1861 and the Criminal Law Amendment Act 1885 acts of buggery and gross indecency between men, whether committed in private or in public, are made criminal offences punishable with maximum sentences of life imprisonment and two years' imprisonment respectively. Homosexual acts between consenting adult women are not criminal offences.

Subject to certain exceptions concerning mental patients, members of the armed forces and merchant seamen, homosexual acts committed in private between two consenting males aged 21 or over have ceased to be criminal offences in England and Wales since the passing of the Sexual Offences Act 1967 and in Scotland since the passing of the Criminal Justice (Scotland) Act 1980.

In July 1978, the United Kingdom Government published a proposal for draft legislation to bring Northern Ireland law on the matter broadly into line with that of England and Wales. However, following consultation of the population of Northern Ireland, the Government announced in July 1979 that they did not intend to pursue the proposed legislative change.

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Mr. Dudgeon, a United Kingdom citizen in his mid-thirties resident in Northern Ireland, is a homosexual. For some time he and others have been conducting a campaign aimed at reforming Northern Ireland law on homosexuality. He was himself questioned by the police in January 1976 about alleged homosexual activities. The matter was referred to the Director of Public Prosecutions, but Mr. Dudgeon was informed in Feburary 1977 that he was not to be prosecuted.

The case originated in an application lodged by Mr. Dudgeon with the Commission in May 1976. Mr. Dudgeon submitted that the criminal laws in force in Northern Ireland prohibiting homosexual activities in private between consenting male adults involve an unjustified interference with his right, under Article 8 of the Convention, to respect for his private life. He further claimed to be a victim of discrimination in breach of Article 14 of the Convention in that, as a male homosexual, he is subject to greater restrictions than are male homosexuals in other parts of the United Kingdom and heterosexuals and female homosexuals in Northern Ireland itself.

In its report adopted on 13 March 1980, the Commission expressed the opinion that:

- the legal prohibition of private consensual homosexual acts involving male persons under 21 years of age was not in breach of the applicant's rights either under Article 8 (eight votes to two) or under Article 14 read in conjunction with Article 8 (eight votes to one, with one abstention);

- the legal prohibition of such acts between male persons over 21 years of age breached the applicant's right to respect for private life under Article 8 (nine votes to one);

- it was not necessary to examine the question whether the last-mentioned prohibition also violated Article 14 read in conjunction with Article 8 (nine votes to one).

1. The very existence of the impugned legislation, the Court held, constitutes a continuing interference with the applicant's right to respect for his private life - which includes his sexual life - within the meaning of paragraph 1 of Article 8. Moreover, the police investigation in January 1976 showed that the threat represented by the legislation was real.

2. The Government had argued that the interference with Mr. Dudgeon's private life is justified since the present laws in Northern Ireland relating to homosexual acts are necessary in a democratic society for, inter alia, the protection of morals within the meaning of paragraph 2 of Article 8.

3. The Court recognised the legitimate need in a democratic society for some degree of regulation of male homosexual conduct, as indeed of other forms of sexual conduct, by means of the criminal law. The application of penal sanctions was justifiable where there was call to protect the public at large from offence and injury and, even in relation to consensual acts committed in private, to provide safeguards against the exploitation and corruption of those who are specially vulnerable by reason, for example, of their youth.

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4. The judgment, after specifying that the Court is not concerned with making any value judgment as to the morality of homosexual relations between adult males, proceeds to examine whether the reasons purporting to justify the actual interference with Mr. Dudgeon's private life are relevant and sufficient under Article 8 § 2. It deals firstly with the various arguments advanced by the Government to contest the Commission's conclusion that the penal prohibition of consensual homosexual acts involving male persons over 21 years of age is not justified.

5. Amongst other things, the Court acknowledged that differences of attitude and public opinion between Northern Ireland and Great Britain in relation to questions of morality do exist to a certain extent and are a relevant factor. It therefore followed that the moral climate in sexual matters in Northern Ireland, in particular as evidenced by the opposition to the proposed legislative change, was one of the matters which the national authorities could properly take into account in assessing whether or not there was a "pressing social need" to keep the law in force unamended.

6. The Court then turned to determine whether the reasons found to be relevant were sufficient. As compared with the era when the impugned legislation was enacted, there is now a better understanding of homosexual behaviour to the extent that in the great majority of the member States of the Council of Europe it is no longer judged to be necessary or appropriate to treat homosexual practices of the kind in question as in themselves a matter to which the sanctions of the criminal law should be applied. The judgment adverts to the fact that in Northern Ireland itself the authorities have in recent years refrained from enforcing the law in respect of private homosexual acts between consenting males over the age of 21 years. It could not be maintained in these circumstances that there is a "pressing social need" to make such acts criminal offences, there being no sufficient justification provided by the risk of harm to vulnerable sections of society, for example the young, or by the effects on the public. The Court considered that such justifications as there are for retaining the law in force unamended are outweighed by the detrimental effects which the very existence of the legislative provisions in issue can have on the life of a person of homosexual orientation like the applicant.

Accordingly the reasons given by the Government, although relevant, were not sufficient to justify the maintenance in force of the impugned legislation in so far as it has the general effect of criminalising private homosexual relations between adult males capable of valid consent.

7. The Court did not rule, as the Commission had done in its opinion, on the question whether the interference complained of by the applicant could, in so far as he is prevented from having sexual relations with males under 21 years of age, be justified as necessary for the moral protection of young persons. The Court explained that it falls in the first instance to the national authorities to decide on the appropriate safeguards required in this respect and, in particular, to fix the age under which young people should have the protection of the criminal law.

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8. The Court concluded by fifteen votes to four that, in breach of Article 8, Mr. Dudgeon had suffered and continues to suffer an unjustified interference with his right to respect for his private life.

9. By fourteen votes to five, the Court held that, in the particular circumstances, it was not necessary to examine the case under Article 14 as well.

10. The applicant had claimed just satisfaction in respect of distress and suffering he had undergone and various expenses incurred. This question was found not to be ready for decision; it was reserved and referred back to the Chamber originally constituted to hear the case and which had relinquished jurisdiction in favour of the plenary Court in January 1981.

9. On 5 November 1981 the European Court of Human Rights delivered judgment on the case of "X v. the United Kingdom".

Mr. X, who died in 1979, was a man with a history of psychiatric troubles. He was diagnosed in 1965 and 1966 as having a paranoid psychosis. In 1968 he was convicted by a Sheffield court of wounding a workmate with intent to cause grievous bodily harm and, pursuant to the Mental Health Act 1959, ordered by the court to be detained indefinitely in Broadmoor Hospital, a special secure mental hospital for the criminally insane. He was conditionally discharged in May 1971 and went to live with his wife. In April 1974, after his wife had, unbeknown to him, complained to his to his probation officer about his behaviour and announced her intention to leave him, X was recalled to hospital by warrant of the Home Secretary. Under the Mental Health Act 1959, the Home Secretary may "at any time" recall a conditionally discharged patient like X. Having examined X after his readmission to Broadmoor, the medical officer was of the opinion that he should be further detained for treatment. X was once more conditionally discharged in July 1976 and died in January 1979.

Shortly after being taken into custody in April 1974, X brought unsuccessful proceedings for a writ of habeas corpus. In response to a request made by his solicitors for information as to the reasons for his recall, the Home Office had stated, without giving further details, that his probation officer had reported that his condition was giving cause for concern".

The case originated in an application lodged by X with the Commission in July 1974. He complained that he had been recalled to Broadmoor Hospital after three years of normal life, without first going before any legal authority and without any doctors having first certified that he was of unsound mind. He further objected that the habeas corpus proceedings did not fully investigate the merits of the decision to recall him to hospital, but merely examined if the recall had been ordered in accordance with the wide powers given to the Home Secretary under the 1959 Act.

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In its report adopted on 16 July 1980, the Commission expressed the opinion:

- by fourteen votes to two, that Article 5 § 1 had not been violated, as the applicant's recall to a mental hospital in 1974 and further confinement there constituted "the lawful detention of /a person/ of unsound mind", within the meaning of sub-paragraph (e) of that paragraph;

- unanimously, that there had been breach of Article 5 § 2, in that the applicant had not been promptly and sufficiently informed of the reasons for his arrest and readmission to hospital in 1974;

- unanimously, that there had also been breach of Article 5 § 4, since, on his recall to hospital, the applicant had not been entitled to take proceedings by which the substantive lawfulness of his detention could be decided speedily by a court.

The Commission referred the case to the Court on 13 October 1980.

1. The Government had argued that at all relevant times throughout his detention the applicant was lawfully detained after conviction by a competent court in accordance with paragraph 1 (a) of Article 5. The Court considered, however, that it had also to verify whether the conditions of paragraph 1 (e) were fulfilled in respect of X's return to hospital in 1974 and subsequent detention there until 1976.

2. The judgment recalls three minimum conditions which have to be satisfied in order for there to be "the lawful detention of a person of unsound mind" within the meaning of Article 5 § 1 (e): except in emergency cases, the individual concerned must be reliably shown to be of unsound mind, that is to say, a true mental disorder must be established before a competent authority on the basis of objective medical expertise; the mental disorder must be of a kind or degree warranting compulsory confinement; and the validity of continued confinement depends upon the persistence of such a disorder.

3. As to the specific facts, the judgment points out that the action by the authorities in April 1974 must be seen against the background of X's previous history, including his record of impulsive and dangerous conduct under stress. The Court agreed with the observation, made by one of the English judges in the habeas corpus proceedings brought by X, that very often the only way patients like X can be allowed back into the community is by releasing them on licence, with very careful supervision and an immediate reaction in the event of a sign of new danger. There was sufficient ground for the Home Secretary to have considered that X's continued liberty constituted a danger to the public and the recall, although not preceded by thorough medical examination, was accordingly justified as an emergency measure. His subsequent confinement in hospital until 1976 was, for its part, justified on the basis of the medical evidence whose objectivity and reliability the Court saw no reason to doubt.

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4. X's conviction and sentence in 1968 did not mean that he was not entitled to take fresh proceedings to have the lawfulness of his recall to hospital in 1974 and subsequent detention there decided speedily by a court. By virtue of Article 5 § 4, a person of unsound mind compulsorily confined in a psychiatric institution for an indefinite or lengthy period is in principle entitled, at any rate where there is no automatic periodic review of a judicial character, to take proceedings at reasonable intervals before a court to put in issue the lawfulness of his detention. The question therefore arose whether the habeas corpus proceedings brought by X satisfied this requirement.

5. The judgment notes the limits within which, under English law, the "lawfulness" of an administrative decision to detain can be challenged in habeas corpus proceedings: when the terms of a statute afford the executive a discretion, the review exercisable by the courts will bear solely upon the conformity of the exercise of that discretion with the empowering statute.

6. Although X had access to a court which ruled that his detention was "lawful" in terms of English law, this could not on its own be decisive for Article 5 § 4 as the Convention itself makes the "lawfulness" of detention of persons of unsound mind subject to certain conditions over and above conformity with the domestic law (see paragraph 2 of the present summary). The review of lawfulness referred to in Article 5 § 4 must therefore be wide enough to bear on these conditions.

A judicial review as limited as that available in the habeas corpus procedure in X's case, while adequate for emergency measures for the detention of persons on the ground of unsoundness of mind, was not sufficient for a continuing confinement such as the one undergone by X until 1976. This meant that in the instant case Article 5 § 4 required an appropriate procedure allowing a court to examine whether the patient's disorder still persisted and whether the Home Secretary was entitled to think that a continuation of the compulsory confinement was necessary in the interests of public safety.

The Court therefore found a breach of Article 5 § 4.

The Court held that it was not necessary to decide the complaint under paragraph 2 of Article 5 since, in the particular circumstances, it amounted to no more than one aspect of the complaint already considered in relation to paragraph 4.

Counsel on behalf of the applicant had indicated that they would be submitting a claim for just satisfaction to obtain reform of the law and compensation for damage suffered. The Court found that the question was not ready for decision and accordingly reserved it.

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IV. Activities of the Committee of Ministers of the Council of Europe with respect to the implementation of the European Convention on Human Rights

The Committee of Ministers of the Council of Europe is called on to perform two functions within the framework of the Convention. Firstly, when a case has not been referred to the European Court within the time allowed for under paragraph 1 of Article 32 of the Convention, ie three months from the date of the transmission to the Committee of Ministers of the Commission's report, the Committee of Ministers is required to take a decision on whether or not the Convention has been violated. Secondly, when the European Court has made a final ruling on a case, it is up to the Committee of Ministers to supervise the execution of the judgment of the Court in accordance with Article 5, of the Convention.

During the period in question, the Committee of Ministers has undertaken the following action in this field:

a. The "Bonnechaux" case against Switzerland

The Committee of Ministers examined this case in the framework of Article 32 of the European Convention on Human Rights.

In his application introduced on 4 November 1977, the applicant complained of the duration of his detention pending trial, claiming that the persistent refusal of the judicial authorities to release him provisionally on adequate bail was quite unjustified and constituted inhuman treatment given his age and state of health.

The European Commission of Human Rights, after having declared the application admissible on 5 December 1978, expressed in its report by 11 votes to one the opinion that the applicant's detention pending trial did not last longer than "the reasonable time" prescribed in Article 5 § 3 of the Convention and that consequently there had been no breach of Article 3 of the Convention in this case.

The Committee of Ministers in its Resolution DH (80) 1 agreeing with the opinion expressed by the Commission in accordance with Article 31 § 1 of the Convention decided that in this case there was no violation of the Convention.

b. The "König" case

In the framework of Article 54 of the European Convention, the Committee of Ministers adopted on 10 October 1980 Resolution DH (80) 2 concerning the judgments of the European Court of Human Rights of 28 June 1978 and 10 March 1980 in the König case which concerns the Federal Republic of Germany.

This resolution reads inter alia as follows:

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"The Committee of Ministers:

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Whereas, in its judgment of 10 March 1980, the Court held unanimously that the Federal Republic of Germany is to pay Dr. König compensation of DM 39,789.95;

Having regard to the "rules concerning the application of Article 54 of the Convention";

Having invited the Government of the Federal Republic of Germany to inform it of the measures which had been taken in consequence of the judgments;

Having regard to its obligations under Article 53 of the Convention to abide by the judgments;

Whereas, during the examination of this case by the Committee of Ministers, the Government of the Federal Republic of Germany informed the Committee of the measures taken in consequence of the judgments;

Having satisfied itself that the Government of the Gederal Republic of Germany has awarded the just satisfaction provided for in the judgment of the Court of 10 March 1980;

Declared that it has exercised its function under Article 54 of the Convention in this case."

c. The "Artico" case

In the framework of Article 54 of the European Convention the Committee of Ministers adopted on 14 December 1980 Resolution DH (80) 3 concerning the judgment of the European Court of Human Rights of 13 May in the "Artico" case which concerns Italy.

The resolution reads inter alia as follows:

"The Committee of Ministers:

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Having invited the Government of Italy to inform it of the measures which had been taken in consequence of the judgment having regard to its obligations under Article 53 of the Convention to abide by the judgment;

Whereas, during the examination of this case by the Committee of Ministers, the Government of Italy informed the Committee of the measures taken in consequence of the judgment;

Having satisfied itself that the Government of Italy has paid to the applicant the amount of the compensation for non-pecuniary injury provided for in the judgment of the Court of 13 May 1980;

Declared that it has exercised its function under Article 54 of the Convention in this case."

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d. The case of "Kaplan against the United Kingdom"

The Committee of Ministers examined the case in the framework of Article 32 of the European Convention on Human Rights.

In his application introduced on 25 July 1976, the applicant complained that a finding that he was unfit to control an insurance company had been made and restrictions imposed on the company's business without his having had a hearing before a court, and alleged violation of Articles 6 and 13 of the convention. The European Commission of Human Rights, after having declared the application admissible on 14 December 1978 has expressed in its report, by a unanimous vote, the opinion that there has been no breach in Article 6, paragraph 1, or of Article 13 of the convention.

The Committee of Ministers in its Resolution DH (81) 1 of 23 January 1981, agreeing with the opinion expressed by the Commission in accordance with Article 31, paragraph 1 of the convention, and voting in accordance with the provisions of Article 32, paragraph 1, of the convention, has decided that in this case there was no violation of the Convention for the Protection of Human Rights and Fundamental Freedoms.

e. The "Sunday Times" case

concerns the United Kingdom.

The resolution reads inter alia as follows:

"The Committee of Ministers:

Having invited the Government of the United Kingdom to inform it of the measures which had been taken in consequence of the judgments, having regard to its obligations under Article 53 of the Convention to abide by the judgments;

Whereas, during the examination of this case by the Committee of Ministers, the Government of the United Kingdom informed the Committee of Ministers of the measures taken in consequence of the judgments, which information is summarised in the Appendix to this Resolution;

Having satisfied itself that the Government of the United Kingdom has awarded the just satisfaction provided for in the judgment of the Court of 6 November 1980,

Declares, after having taken note of the information supplied by the Government of the United Kingdom, that it has exercised its function under Article 54 of the Convention in this case."

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Appendix to Resolution DH (81) 2

Information provided by the Government of the United Kingdom during the examination of the Sunday Times case before the Committee of Ministers

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On 20 November 1980 the British Government sent to Times Newspapers Limited the sum of £22,626 and 78 pence awarded by the Court. They have acknowledged receipt of this sum.

Subsequent to the judgment of the Court of 26 April 1979 the British Government drafted a bill to amend the English law as regards contempt of Court, whose operation in this particular case was held by the majority of the Court to have led to a breach of Article 10 of the Convention. This bill is at present before parliament. It is designed inter alia to prevent further conflict in this respect with the provisions of the European Convention on Human Rights as interpreted by the Court in this case.

f. The case of "Draper against the United Kingdom"

The Committee of Ministers has examined this case in the framework of Article 32 of the European Convention on Human Rights.

In his application introduced on 16 November 1977 the applicant complained that he was denied facilities necessary to enable him to marry whilst serving a sentence of life imprisonment.

The European Commission on Human Rights after having declared the application admissible on 1 May 1979, in its report adopted on 10 July 1980 considered that the fact that national law did not allow the applicant to marry in prison and that prison authorities refused to allow him temporary release so that he could marry in a prescribed place elsewhere amounted to an interference with the exercise of the applicant's right to marry that the imposition of any substantial period of delay on the exercise of this right must in general be seen as an injury to its substance and that the restrictions imposed on the applicant's ability to exercise his right to marry which had resulted from the combined effects of national law and adminstrative action involved an injury to the substance of that right.

In its report the Commission expressed the unanimous opinion that the applicant's right to marry guaranteed by Article 12 of the Convention had been violated.

The Committee of Ministers in its Resolution DH (81) 4 agreed with the opinion expressed by the Commission in accordance with Article 31, paragraph 1 of the Convention.

During the examination of this case the Committee of Ministers was informed by the Government of the United Kingdom that it accepted the Commission's report, that a decision had been taken to prepare legislation to amend the marriage laws so as to allow prisoners to be married in prison, that it hoped that there would be an early opportunity to introduce this legislation after the passage of which it intended to allow prisoners' marriages without the restrictions and delays which at present apply, and that facilities to marry had been offered to Mr Draper.

The Committee of Ministers decided that in this case there has been a violation of Article 12 of the Convention, and, having regard to the information supplied by the Government of the United Kingdom, that no further action is called for in this case.

g. The case of "Hamer against the United Kingdom"

The Committee of Ministers has examined this case in the framework of Article 32 of the European Convention on Human Rights.

In his application introduced on 25 May 1975 the applicant complained that he was denied facilities necessary to enable him to marry whilst he was serving a prison sentence, alleging a violation of Article 12 of the Convention.

The European Commission on Human Rights, after having declared the application admissible on 13 October 1977, in its report adopted on 13 December 1979 considered that the fact that national law did not allow the applicant to marry in prison and the fact that the Home Secretary would not allow him temporary release so that he could marry elsewhere, amounted to an interference with the exercise of his right to marry, that the imposition of any substantial period of delay on the exercise of this right must in general be seen as an injury to its substance and that the applicant's ability to exercise his right to marry was substantially delayed by the combined effects of national law and administrative action.

In its report the Commission expressed the unanimous opinion that the applicant's right to marry guaranteed by Article 12 of the Convention had been violated.

The Committee of Ministers in its Resolution DH (81) 5 agreed with the opinion expressed by the Commission in accordance with Article 31, paragraph 1 of the Convention.

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During the examination of this case the Committee of Ministers was informed by the Government of the United Kingdom that it accepted the Commission's report, that it had changed its practice with regard to the marriage of prisoners, like Mr Hamer, serving a determinate custodial sentence, that a decision had been taken to prepare legislation to amend the marriage laws so as to allow prisoners to be married in prison, that it hoped that there would be an early opportunity to introduce this legislation after the passage of which it intended to allow prisoners' marriages without the restrictions and delays which at present apply.

The Committee of Ministers decided that in this case there has been a violation of Article 12 of the Convention and, having regard to the information supplied by the Government of the United Kingdom, that no further action is called for in this case.

h. The "Guzzardi" case

In the framework of Article 54 of the Convention, the Committee of Ministers adopted on 30 April 1981 Resolution DH (81) 6 concerning the judgment of the European Court of Human Rights of 6 November 1980 in the "Guzzardi" case, which concerns Italy.

The Resolution reads inter alia as follows:

"The Committee of Ministers:

.....

Having invited the Government of Italy to inform it of the measures which had been taken in consequence of the judgment having regard to its obligations under Article 53 of the Convention to abide by the judgment;

Whereas, during the examination of this case by the Committee of Ministers, the Government of Italy informed the committee of the measures taken in consequence of the judgment;

Having satisfied itself that the Government of Italy has paid to the applicant the sum under Article 50 of the Convention provided for in the judgment of the Court of 6 November 1980,

Declares that it has exercised its function under Article 54 of the Convention in this case."

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i. The case of "Caprino against the United Kingdom"

The Committee of Ministers examined this case in the framework of Article 32 of the European Convention on Human Rights.

In his application introduced on 16 January 1975 the applicant complained inter alia that the judicial review of the lawfulness of his detention in view of his deportation was limited in scope and thus in breach of Article 5, paragraph 4 of the Convention.

The European Commission on Human Rights, after having declared the application admissible on 3 March 1978 considered, in its report adopted on 17 July 1980. that Article 5 (paragraph 4) envisages only remedies available during the time of detention and that a remedy available after release (claim of damages for false imprisonment) does not therefore enter into account for the purposes of this provision, that the Convention does not require any judicial review of deportation proceedings as such, and that the legal position under the Convention cannot be judged otherwise even if a departation order serves as the basis for detention, that the scope of the judicial review of the deportation order by "certiorari" proceedings is therefore irrelevant under Article 5, paragraph 4, that a judicial control of the lawfulness of the detention by "habeas corpus" proceedings would have been available in the present case, but that the applicant had failed to make use of this remedy, or to indicate any particular grounds for the unlawfulness of his detention which the courts would not have investigated, that in these circumstances the question whether the judicial review provided by this remedy would have been sufficiently wide in scope was one which the Commission could not consider merely on the basis of a hypothetical judgment.

The Commission has expressed the opinion in its report, by eight votes against one and one abstention that there has been no breach of Article 5, paragraph 4 of the Convention in this case.

The Committee of Ministers in its Resolution DH (81) 7 agreed with the opinion expressed by the Commission in accordance with Article 31, paragraph 1 of the Convention and decided that in this case there was no violation of the Convention for the Protection of Human Rights and Fundamental Freedoms.

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k. The "Airey" case

In the framework of Article 54 of the European Convention on Human Rights, the Committee of Ministers has adopted Resolution DH (81) 8 concerning the judgments of the European Court of Human Rights of 9 October 1979 and 6 February 1981 in the "Airey" case which concerns Ireland.

The resolution reads inter alia as follows:

"The Committee of Ministers

.....

Having invited the Government of Ireland to inform it of the measures which had been taken in consequence of the judgments, having regard to its obligations under Article 53 of the Convention to abide by the judgments;

Whereas, during the examination of this case by the Committee of Ministers, the Government of Ireland informed the Committee of Ministers of the measures taken in the area with which the judgments are concerned, which information is summarised in the Appendix to this Resolution;

Having satisfied itself that the Government of Ireland has awarded the just satisfaction provided for in the judgment of the Court of 6 February 1981,

Declares, after having taken note of the information supplied by the Government of Ireland, that it has exercised its function under Article 54 of the Convention in this case."

Appendix to Resolution DH(81) 8

INFORMATION PROVIDED BY THE GOVERNMENT OF IRELAND DURING THE EXAMINATION OF THE "AIREY" CASE BEFORE THE COMMITTEE OF MINISTERS

At the time of the judgment of the European Court of Human Rights, of 9 October 1979, there already existed in Ireland a Criminal Legal Aid Scheme and the Government had decided to introduce a Scheme of Civil Legal Aid and Advice. In December 1979, the Minister for Justice laid before each House of the Oireachtas (parliament) a Scheme of Civil Legal Aid and Advice and appointed an independent Board, the Legal Aid Board, to administer it. The Scheme covers family law cases, including maintenance and separation cases but is not confined to family law matters alone. In accordance with normal practice it provides for a merits test and a means test. The Legal Aid Board's first Law Centres opened on 15 August 1980 and there are presently 7 Law Centres in operation with plans on hand for further expansion. The operation of the Scheme is kept under review and already there have been introduced to the Scheme Ministerial Policy Directives and amendments which are designed to improve the Scheme, give access to a greater number of people to legal services and reduce the maximum contributions payable.

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The Irish Government is of the opinion that these measures fulfil the obligations under the judgment relating to Article 6(1) and 8 of the Convention and considers it unnecessary to take any other measures. Nevertheless, additional measures are being taken in order to simplify court procedures. The Courts Bill, 1980, which was presented to the Dail on 15 October 1980 by the Minister for Justice includes provisions to increase the civil jurisdiction of the District and Circuit Courts and to confer new jurisdiction on those Courts in family law matters. Among other proposals the Bill provides that the Circuit Court is to be given full jurisdiction in divorce a mensa et thoro. The effect of the proposals in the Bill generally will be to provide cheaper, quicker and more convenient access to the Courts.

As for the European Court's judgment of 6 February 1981 under Article 50 of the European Convention, the Irish Government paid the applicant the sum of three thousand one hundred and forty Irish pounds (Ir£ 3,140) on 4 March 1981 as established by the European Court.

l. The case of "Schertenleib against Switzerland"

The Committee of Ministers has examined this case in the framework of Article 32 of the European Convention on Human Rights.

In his application introduced on 22 August 1978, the applicant complained about the length of his detention on remand and of the criminal proceedings instituted against him, claiming that the judicial authorities' refusal to release him on bail was unjustified, that the judicial authorities had not conducted his case with due diligence and that the length of the proceedings had infringed the Convention.

The European Commission of Human Rights, after having declared the application admissible on 12 July 1979 in as far as it related to the length of his detention on remand and the length of the proceedings, has expressed in its report the opinion, by 12 votes to 3, that insofar as it is submitted to its examination, the applicant's detention on remand has not lasted longer than the reasonable time provided for in Article 5, paragraph 3 of the Convention, and unanimously that the length of the proceedings against the applicant has not exceeded the "reasonable time" provided for in Article 6, paragraph 1 of the Convention and that therefore there has not been in this case a violation of these two provisions.

The Committee of Ministers, agreeing with the opinion expressed by the Commission in accordance with Article 31, paragraph 1, of the Convention decided, in its Resolution DH (81) 9, adopted on 1 July 1981, that in this case there was no violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

m. The case of "Ventura against Italy"

The Committee of Ministers has examined this case in the framework of Article 32 of the European Convention on Human Rights.

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In his application introduced on 20 March 1976 the applicant complained that the length of his detention on remand as well as the length of the criminal proceedings instituted against him inter alia for certain criminal attempts having occasioned death which took place in Milan in December 1969 constituted respectively violations of Article 5, paragraph 3 and Article 6, paragraph 1 of the Convention.

The European Commission of Human Rights, after having declared the application admissible on 9 March 1978, has expressed in its report the opinion, by ten votes against four with one abstention, that there was no breach of Article 5, paragraph 3, of the Convention and by elevent votes against four, that there was equally no breach of Article 6, paragraph 1, of the Convention.

The Committee of Ministers, agreeing with the opinion expressed by the Commission in accordance with Article 31, paragraph 1, of the Convention, has decided in its Resolution DH (81) 10 adopted on 25 September 1981 that in this case there was no violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

n. The case of "Bonazzi against Italy"

The Committee of Ministers has examined this case in the framework of Article 32 of the European Convention on Human Rights.

In his application introduced on 8 July 1977, the applicant complained that his detention following a warrant of arrest issued by the Assizes Court of Appeal of Ancona on 15 June 1976 was not lawful under Italian law and that this constituted a violation of Article 5, paragraph 1 of the Convention and that no court decided on his appeal against the above-mentioned warrant of arrest contrary to Article 5, paragraph 4 of the Convention.

The European Commission of Human Rights, having declared the appplication admissible on 13 December 1978 has expressed in its report unanimously the opinion that there was no breach of Article 5, paragraph 1 of the Convention and equally unanimously that there was no breach of Article 5, paragraph 4, of the Convention.

The Committee of Ministers, agreeing with the opinion expressed by the Commission in accordance with Article 31, paragraph 1, of the Convention, has decided in its Resolution DH (81) 12, adopted on 23 October 1981 that in this case there was no violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

V. Other measures concerning the protection of human rights

Section 1 - Ad hoc Committee of Experts on the draft Convention against Torture

This ad hoc Committee, which had been instructed to exchange views on the draft Convention against Torture submitted by the Swedish Government to the UN Commission on Human Rights, met in December 1980, June 1981 and December 1981. It discussed in particular the provisions of the draft relating to questions of jurisdiction and the implementation measures.

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Section 2 - Ad hoc Committee of Experts on the multiplication of complaint procedures at the international level

This ad hoc Committee met in December 1980 and discussed mainly the risks of overlapping which might result from the multiplication of complaint procedure at the international level.

Section 3 - Ad hoc Committee of Experts on human rights in relation to development

This ad hoc Committee of Experts met in December 1981 and discussed mainly the concept of the right to development and the work of the UN Working Group of governmental experts on the right to development.

Section 4 - Implementation of the Medium-Term Plan in the field of human rights

The Steering Committee for Human Rights unanimously elected, with effect from 1 January 1981:

- as Chairman: Mr. M. KRAFFT (Switzerland)

- as Vice-Chairman: Mr. T. DOLVA (Norway)

The Committee also unanimously elected the following members for the Bureau:

- Mrs. I. MAIER (Federal Republic of Germany)

- Mr. C. ZANGHI (Italy)

- Mr. J. NISET (Belgium)

i. Strengthening the protection of human rights in Europe

- The Steering Committee for Human Rights has completed its first reading of the draft text of Protocol No. 6 to the Convention securing certain rights other than those already included in the Convention and Protocols thereto.

- In the framework of the follow-up to the Declaration on Human Rights of the member States of the Council of Europe of 27 April 1978, the Steering Committee for Human Rights has commenced work relating to three preliminary studies:

- to determine the extent to which the European Convention on Human Rights and its Protocols guarantee certain rights of the Individual of an economic, social and cultural character,

- to examine the case law of the European Commission and Court of Human Rights with a view to identifying any rights in the economic, social and cultural fields which these organs have found not to be covered by the European Convention and its Protocols but to which its scope might now be extended,

- to see whether the Constitutions of member States guarantee any social, economic and cultural rights which might be considered for inclusion in the Convention.

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- On the suggestion of the Steering Committee for Human Rights the Committee of Ministers adopted in November 1981 the following Resolution on access to information held by public authorities:

RECOMMENDATION NO. R (81) ...
OF THE COMMITTEE OF MINISTERS TO MEMBER STATES
ON THE ACCESS TO INFORMATION HELD BY PUBLIC AUTHORITIES

The Committee of Ministers, under the terms of Article 15 (b) of the Statute,

Considering that the aim of the Council of Europe is to achieve greater unity between its members;

Having regard to Assembly Recommendation 854 on access by the public to government records and freedom of information;

Considering the importance for the public in a democratic society of adequate information on public issues;

Considering that access to information by the public is likely to strengthen confidence of the public in the administration;

Considering therefore that the utmost endeavour should be made to ensure the fullest possible availability to the public of information held by public authorities,

RECOMMENDS the governments of member states to be guided in their law and practice by the principles appended to this recommendation.

Appendix to Recommendation No. R (81) ...

The following principles apply to natural and legal persons. In the implementation of these principles regard shall duly be had to the requirements of good and efficient administration. Where such requirements make it necessary to modify or exclude one or more of these principles, either in particular cases or in specific areas of public administration, every endeavour should nevertheless be made to achieve the highest possible degree of access to information.

I.

1. Everyone within the jursidiction of a member state shall have the right to obtain, on request, information held by the public authorities other than legislative bodies and judicial authorities.

II.

Effective and appropriate means shall be provided to ensure access to information.

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III.

Access to information shall not be refused on the grounds that the requesting person has not a specific interest in the matter.

IV.

Access to information shall be provided on the basis of equality.

V.

The foregoing principles shall apply subject only to such limitations and restrictions as are necessary in a democratic society for the protection of legitimate public interests, (such as national security, public safety, public order, the economic well-being of the country, the prevention of crime, or for preventing the disclosure of information received in confidence), and for the protection of privacy and other legitimate private interests, having, however, due regard to the specific interest of an individual in information held by the public authorities which concerns him personally.

VI.

Any request for information shall be decided upon within a reasonable time.

VII.

A public authority refusing access to information shall give the reasons on which the refusal is based, according to law or practice.

VIII.

Any refusal of information shall be subject to review on request.

As for the machinery and application of the European Convention on Human Rights, the Steering Committee for Human Rights has examined inter alia the implications of an increase in the number of states recognising the right of individual petition for the working of the convention organs.

The Committee of Ministers has taken note of the final report on Activity 1.10.1: "To facilitate the filing of applications by improving the system of legal aid before the European Commission and Court of Human Rights" prepared by the Steering Committee for Human Rights. It has also taken note of the final report on Activity 1.10.1: "Study of the need to facilitate the filing of applications to the European Commission of Human Rights by mentally handicapped persons".

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- In the framework of the activity relating to the situation of women in the political process, the Steering Committee for Human Rights decided to undertake a study, the purpose of which will be:

i. to analyse the political behaviour of women and examine and evaluate the various factors contributing to the weak participation of women at the policy and decision-making levels of political life;

ii. to evaluate the impact on participation of the various electoral systems of member states and of the structure and organisation of political parties, and

iii. to examine and evaluate the potential role of the media and other organisms in promoting political awareness, as well as temporary special measures.

ii. Education and information in the field of human rights

- On 30 October 1980, the Committee of Ministers adopted the following Resolution (80) 18 concerning the award of the European Human Rights Prize:

"The Committee of Ministers,

Having regard to Resolution (80) 1 containing regulations on a European Human Rights Prize;

Considering that the International Commission of Jurists has made an exceptional contribution to the cause of human rights in accordance with the principles of individual freedom, political liberty and the rule of law, which are the foundations of any truly democratic society and reflected notably in the European Convention on Human Rights,

Decides to award the European Human Rights Prize to the International Commission of Jurists."

The prize, which is honorary in charcter, was presented to the Secretary General of the International Commission of Jurists during the session of the Parliamentary Assembly in January 1981.

The Committee of Experts for the promotion of education and information in the field of human rights (DH-ED) has pursued its activities, in particular:

- A skeleton syllabus for the teaching of human rights in law faculties is currently being drawn up. The purpose of the skeleton syllabus is to provide inspiration and information. It will be suitably structured for adaptation in the light of specific characteristics of university programmes in member States.

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It will serve principally for the teaching of human rights as a specific course or in the framework of courses of domestic law (constitutional and administrative law, penal law, etc), international law and international relations. It will thus pinpoint the main areas of study and provide useful information on each of them. It will focus on the relevant standards contained in instruments drawn up within the Council of Europe and where appropriate, the case law relating thereto. The relevant mechanisms of control will also be dealt with and their most important characteristics highlighted. Whilst focusing on instruments drawn up within the Council of Europe, the syllabus will attempt to set these instruments in the context of the protection of human rights at the national and world levels.

It should be noted in this context that the Committee of Ministers has authorised the Committee of Experts for the promotion of education and information in the field of human rights to hold, as and when it judges necessary and appropriate, small seminars comprising members of the Committee and other competent persons, particularly academics or representatives of certain professions or the civil service.

A meeting on the teaching of human rights in law faculties took place from 18 to 20 May 1981.

The meeting comprised academics, who are members of the Committee of Experts for the promotion of education and information in the field of human rights, and professors from member states of the Council of Europe, specialised in the following subjects: philosophy of law; constitutional law; administrative law; labour law; civil law; family law; criminal law and procedure; private international law and political science.

The purpose of the meeting was:

- to examine and comment on the detailed plan of a skeleton syllabus for the teaching of human rights in law faculties and to comment on the methods adopted for its elaboration;

- to discuss questions of methodology relating to human rights teaching in law and political science faculties;

- to examine the problem of teaching materials and to provoke constructive criticism and suggestions on the future orientation of the Council of Europe's work in this field.

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- Work on promoting the teaching of human rights in the framework of other university disciplines was also commenced.

- Work has been undertaken in relation to several socio-professional groups in order to promote increasing knowledge and understanding of human rights.

Information meetings on the European Convention on Human Rights were organised in various European towns for legal practitioners with a view to familiarising them with the mechanism of this instrument and its impact on the domestic legal order. These information meetings are part of an ongoing series in member States.

A number of initiatives were also taken with a view to promoting increased knowledge of human rights issues among young diplomats.

Finally, a study on the promotion of the teaching of human rights in the training of the police and prison staff should produce results in the near future.

- A handbook for teachers containing useful information and ideas on how to approach human rights teaching is in preparation.

A European teachers seminar on "Human Rights Education in the upper secondary school" was organised in May 1980 to discuss approaches to human rights education and teaching resources.

Section 5 - Declaration regarding intolerance -a threat to democracy

As a follow-up to their discussions at the 67th session on the question of resurgence of fascist propoganda and its racist aspects, the Committee of Ministers adopted at its 68th session (14 May 1981), a declaration regarding intolerance - a threat to democracy, which reads as follows:

THE COMMITTEE OF MINISTERS OF THE COUNCIL OF EUROPE,

1. Convinced that tolerance and respect for the dignity and intrinsic equality of all human beings are the very basis of a democratic and pluralistic society;

2. Profoundly disturbed by the resurgence of various forms of intolerance;

3. Reaffirming its determination to safeguard the effective political democracy referred to in the preamble to the European Convention for the Protection of Human Rights and Fundamental Freedoms;

4. Recalling that human rights and fundamental freedoms are the very foundation of justice and peace throughout the world;

5. Bearing in mind that the European Convention for the Protection of Human Rights and Fundamental Freedoms has successfully afforded effective international protection, without discrimination, to everyone within the jurisdiction of the Contracting States;

6. Recalling that, in accordance with the United Nations International Convention on the elimination of all forms of racial discrimination and following the Committee of Ministers'Resolution (68) 30, of 31 October 1968, on measures to be taken against incitement to racial, national and religious hatred, several member States have either adopted new legislation or reinforced existing legislation against acts inspired by racism;

7. Welcoming the adoption by the Consultative Assembly of Resolution 743 (1980) on "the need to combat resurgent fascist propaganda and its racist aspects";

8. Considering that the best way of countering all forms of intolerance is to preserve and consolidate democratic institutions, to foster citizens' confidence in those institutions and to encourage them to take an active part in their operation;

9. Convinced of the vital part played by education and information in any action against intolerance, whose origin frequently lies in ignorance, source of incomprehension, hatred and even violence,

I. Vigourously condemns all forms of intolerance, regardless of their origin, inspiration or aims, and the acts of violence to which they give rise, especially when human lives are at stake;

II. Rejects all ideologies entailing contempt for the individual or a denial of the intrinsic equality of all human beings;

III. Solemnly recalls its unswerving attachment to the principles of pluralistic democracy and respect for human rights, the cornerstone of membership of the Council of Europe, as well as to the European Convention for the Protection of Human Rights and Fundamental Freedoms, the essential instrument in the effective exercise of these rights;

IV. Decides

i. to reinforce efforts to prevent, at national and international levels, and particularly in the framework of the Council of Europe, the spread of totalitarian and racist ideologies and to act effectively against all forms of intolerance;

ii. to take, with this objective in mind, all appropriate measures and to implement a programme of activities including, in particular, the study of legal instruments applicable in the matter with a view to their reinforcement where appropriate;

iii. to promote an awareness of the requirements of human rights and the ensuing responsibilities in a democratic society, and to this end, in addition to human rights education, to encourage the creation in schools, from the primary level upwards, of a climate of active understanding of and respect for the qualities and culture of others;

V. Agrees that member States will make every effort so that the principles enounced above prevail within other international organisations;

VI. Appeals to all institutions, movements and associations and to all political and social forces to contribute towards a sustained effort against the threat to democracy represented by intolerance.

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Section 6 - Human Rights Documentation Centre

The Committee of Ministers has decided to establish within the Directorate of Human Rights a Human Rights Documentation Centre with the aim of:

- centralising internal restricted documents and information as well as centralising an disseminating non-restricted documentation and information;
- operating an information and research service for the three human rights services of the Council of Europe and for member Governments;
- preparing and coordinating publications;
- coordinating the handling of public human rights information between European based organisations and institutions specialising in human rights.

Section 7 - Publications

Volumes XXII and XXIII of the Yearbook of the European Convention on Human Rights, covering the years 1979 and 1980 were published respectively in 1980 and 1981. The Yearbook contains general information on the Convention, the Commission and the Court, slelected decisions of the Commission on the admissibility of applications, decisions of the Committee of Ministers and judgments of the Court, and information about the application of the Convention in national law by the courts of certain member States.

Section 8 - Fifth International Colloquy about the European Convention on Human Rights (Frankfurt, 9-12 April 1980)

The fifth International Colloquy about the European Convention on Human Rights organised jointly by the Government of the Federal Republic of Germany and the Secretariat General of the Council of Europe was held from 9-12 April 1980 in Frankfurt.

The themes of the Colloquy were:

i. Reservations to and derogations from provisions in human rights instruments

ii. The notion of victim under Article 25 of the European Convention on Human Rights

iii. The European Convention on Human Rights and States Parties

- International control of restrictions and limitations
- Effects of the judgments of the European Court of Human Rights in domestic law and before domestic courts.

VI. THE EUROPEAN SOCIAL CHARTER

The European Social Charter was signed on 18 October 1961 and entered into force on 26 February 1965, after being ratified by the United Kingdom, Norway, Sweden, Ireland and the Federal Republic of Germany. It has since been ratified by Denmark, Italy, Cyprus, Austria, France, Iceland, Spain and the Netherlands.

A. SUPERVISION OF THE APPLICATION

The nature of social and economic rights guaranteed by the Charter entails a rather special system of supervision based on the Contracting Parties' submission of biennial reports on the matters covered by those provisions of the Charter which they have accepted. Copies of these reports are communicated to certain national employers' and workers' organisations, which may make comments on the said reports and request that they be forwarded by the Contracting Parties to the Secretary General of the Council of Europe. The supervision procedure consists of the examination of these reports and of any comments made thereon by the afore-mentioned organisations, by a Committee of Independent Experts and subsequently by the Governmental Committee, consisting of representatives of the Contracting States, on which at present one international organisation of employers and one international trade union organisation sit as observers in a consultative capacity.

The conclusions of the Committee of Independent Experts are transmitted to the Governmental Committee and to the Parliamentary Assembly, which receives also as an information document, the report of the Governmental Committee. The Parliamentary Assembly communicates its views (in the form of an opinion) to the Committee of Ministers, on the application of various provisions of the Charter and on any measures that could be taken by the Contracting Parties with a view to ensuring a proper application of such provisions.

The Committee of Ministers may under Article 29 of the Charter make, by a majority of two-thirds of the members entitled to sit on it, on the basis of the Governmental Committee's report, to each Contracting Party any necessary Recommendations.

The first cycle of supervision ended on 12 November 1971 with the Committee of Ministers' adoption of Resolution (71) 30.

The second cycle, which covered the years 1968-1969, was completed on 29 May 1974, when the Committee of Ministers adopted a resolution (Resolution (74) 16). Acting in pursuance of Article 29 of the Charter, the Committee of Ministers decided in this Resolution to:

1. transmit to the governments of the States concerned Conclusions II of the Committee of Independent Experts, the second report of the Governmental Committee, as well as the relevant Opinion of the Consultative Assembly;

2. draw the attention of these governments to the observations formulated in the documents mentioned under 1. above, especially as regards the action required to make their national legislation and practice comply with the obligations deriving from the Charter.

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The third cycle of supervision covered the years 1970 and 1971. The Committee of Independent Experts completed its work in 1973 with the adoption of "Conclusions III". These were examined during 1974 by the Governmental Committee, which adopted this report in November. In accordance with Article 28 of the Charter "Conclusions III" and the Governmental Committee's report were transmitted to the Parliamentary Assembly which adopted Opinion No. 71 (1975).

Acting on the 4th and last supervising body, the Committee of Ministers took the following decision (Resolution (75) 26).

"The Committee of Ministers ... acting in accordance with Article 29 of the Charter

1. Decides to forward to the governments ... /the States concerned/... Conclusions III of the Committee of Independent Experts, the Governmental Committee's third report and the Consultative Assembly's Opinion No. 71;

2. Draws the attention of ... governments of these ... States to the comments contained in the documents mentioned in paragraph 1 above, and in particular to items 6, 7 and 8 of the Assembly's Opinion, concerning the steps necessary to bring national legislation and practice more closely into line with the obligations ensuing from the Charter ...".

The reference to the Assembly's Opinion concerned that part of Opinion No. 71 where the Committee of Ministers was urged to make recommendations to states for the strict application of the Social Charter and where it was proposed that the Committee should invite the States concerned to make their legislation and practice on stated points conform to the provisions of the Charter. Moreover, it was proposed that the Committee communicates to the States concerned the observations of the Independent Experts concerning the rights of men and women workers to equal pay for work of equal value.

During the fourth cycle of supervision, covering 1972 and 1973, the Committee of Independent Experts examined the reports submitted by the Contracting Parties concerned and adopted in 1975 its "Conclusions IV". The Governmental Experts examined them and adopted its fourth report on 13 August 1976. The Contracting Parties' reports and the conclusions of the two committees were transmitted to the Assembly which adopted Opinion No. 83 (1977) on 26 April 1977. On 2 March 1978 a Resolution (Resolution (78) 9) with a wording more or less similar to the previous one concerning the fourth cycle of supervision of the application of the Charter was approved by the Committee of Ministers.

As regards the fifth cycle of supervision, covering 1974 and 1975, the Contracting Parties' reports were examined by the Committee of Independent Experts, which adopted its conclusions in December 1977 and subsequently by the Governmental Committee. The Assembly, in its Opinion 95 (1979), after examination of Conclusions V and the Governmental Committee's report, urged the Contracting Parties "to devote their full attention to the proper application of the Charter with regard to equal pay for male and female workers, the right to organise and bargain collectively and the right of children and adolescents to protection".

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The Assembly also recommends in this opinion that the Committee of Ministers, with a view to improving the application of the Charter, address recommendations to those countries which to some extent do not respect their obligations under it and further invite early ratifications from the nine member States which have not yet done so.

The Committee of Ministers, in Resolution ChS (80) 1 of 11 June 1980, draws the attention of the Contracting States to the observations made in Conclusions V of the Independent Experts, the fifth report of the Governmental Committee and Assembly Opinion 95 and in particular to the latter's observations concerning equality of remuneration between men and women, the right to organise and the right of children and young persons to protection "concerning which steps may have to be taken in order to bring domestic legislation and practice more fully into line with the obligations ensuing from the Charter".

As regards the sixth cycle, the Committee of Independent Experts has terminated the examination of the biennial reports from the states concerned (covering 1976-1977) and adopted Conclusions VI at the end of the year 1979. These conclusions have been transmitted to the Governmental Committee which completed their consideration of them, together with the states' biennial reports in November 1980. Both texts will be submitted to the Assembly which adopted its opinion (Opinion No. 106) in 1981. The final set of documents in now before the Committee of Ministers which might take a decision early in 1982.

Simultaneously the work concerning the seventh cycle was started and the Committee of Independent Experts considered the reports submitted for the period from 1 January 1978 to 31 December 1979. It adopted, in December 1981, Conclusions VII which have been forwarded to the Governmental Committee and the Assembly.

Over the various cycles of supervision, it was found by the supervisory bodies that continuous progress was being made by the Contracting Parties in improving their compliance with the provisions of the Charter. This was particularly made evident by the considerable number of changes which have been introduced in laws, regulatations and practice of the different member countries to bring their national situation into closer conformity with the requirements of the Charter. These instances of practical progress illustrate the influence of the Charter's supervisory system on social policy.

Some significant examples of recent achievements include the following:

- in Austria an Act of 1979 guarantees henceforth the right of men and women to equal pay for work of equal value and the right of appeal both to a commission on equal treatment and to courts;

- in Cyprus Article 59 of the Public service Law, which denied civil servants the right to join trade unions other than those composed exclusively of civil servants, was repealed;

- in Ireland and Italy the right to organise was granted to members of the police force.

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It should be noted, on the other hand, that the Committee of Ministers of the Council of Europe decided, in January 1977, to implement Article 22 of the Charter and in 1978 it agreed that the first series of reports on non-accepted provisions would concern Article 4, paragraphe 3, (equality of remuneration between men and women), Article 7, paragraph 1 (minimum age of admission of children to employment), and Articles 8, paragraph 1 (maternity leave) and 8, paragraph 2 (prohibition of dismissal during maternity leave). The reports submitted have already been considered by the Committee of Independent Experts and the Governmental Committee whose reports have been communicated to the Assembly.

In the light of this first experience, the Committee of Ministers decided to undertake in 1982 a similar inquiry bearing this time on :

- Article 2 para. 4 (Reduced working hours or additional holidays for workers in dangerous or unhealthy occupations)

- Article 7 para. 4 (Safeguarding the development and vocational training of young persons under 16)

- Article 8 para. 4 (Regulation of night work and prohibition of dangerous, unhealthy or arduous work for women workers)

- Article 19 para. 8 (Security against expulsion).

It is obvious that such a reporting may lead to the acceptance of additional provisions as provided for under Article 20 para. 3 and as two States already have done.

B. EXTENSION OF THE LIST OF ECONOMIC AND SOCIAL RIGHTS PROVIDED FOR IN THE EUROPEAN SOCIAL CHARTER

Within the framework of the work to develop the protection of economic and social rights, the Steering Committee for Social Affairs examined in depth the rights enshrined in the Social Charter with a view to assessing whether they should be up-dated or supplemented. After consideration of the result of this analysis the Committee of Ministers decided in September 1981 to ask the Steering Committee to go on with its work and to undertake the drafting of preliminary texts submitting in a standard setting form proposals likely to be inserted in a Protocol to the Charter.

VII. PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE

In the course of 1981, the Assembly of the Council of Europe adopted various texts dealing with human rights. Among the most important, the following are worth mentioning:

- Recommendation 909 (1981) on the International Convention against Torture which reads as follows:

"The Assembly,

1. Recalling its Recommendation 768 (1975), on toture in the world;

2. Recalling that torture has been universally denounced as one of the gravest violations of human rights, demanding effective measures for its prevention;

3. Considering that the Swedish Government has submitted to the United Nations Commission on Human Rights a draft International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

4. Considering the exchanges of views of governmental experts on this draft convention have been held in the framework of the Council of Europe;

5. Considering that the Swiss Committee against Torture, and the International Commission of Jurists have prepared the draft Optional Protocol to the draft International Convention against Torture, which the Government of Costa Rica submitted to the United Nations Commission on Human Rights in March 1980;

6. Considering that the draft Optional Protocol proposes an additional system of implementation of the draft convention comprising regular, unannounced visists by delegates to places of detention in territories under the control of states parties to the Protocol;

7. Convinced that such a procedure, which is based essentially on the experience of the International Committee of the Red Cross (ICRC) in carrying out programmes of visits to prisons in various countries, would make an important contribution to the prevention of torture;

8. Considering that the alarming reports concerning torture in some member states of the Council of Europe are such as to justify the establishment of a system of unannounced visits to places of detention.

9. Recommends that the Committee of Ministers:

i. invite to governments of member states to hasten the adoption and implementation of the draft Convention against Torture prepared by the United Nations Commission on Human Rights;

ii. invite the governments of member states of the Council of Europe represented on the United Nations Commission on Human Rights to do their utmost to ensure that the Commission gives detailed consideration to the draft Optional Protocol as soon as the text of the draft convention has been submitted to the Economic and Social Council of the United Nations, with a view to strengthening the implementation of the convention."

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- Resolution 745 (1981) on the accession of the European Communities to the European Convention on Human Rights which reads as follows;

"The Assembly,

1. Considering that the aim of the Council of Europe, under Article 1 of its Statute, is to achieve a greater unity between its members, and that this aim shall be pursued, inter alia, by agreements and common action in the maintenance and further realisation of human rights and fundamental freedoms;

2. Considering that the European Convention on Human Rights is the most outstanding achievement of the Council of Europe in the field of human rights;

3. Desirous both the widen and to stengthen the scope of the convention's implementation;

4. Considering that, although the convention is in force in all member states of the European Communities, it does not formally apply to the Community institutions and to their legal acts;

5. Considering that this situation is contrary to the intentions of the originators of both the European Convention on Human Rights and the treaties establishing the European Communities;

6. Further recalling that the Court of Justice of the Communities has held that it could not accept measures incompatible with the fundamental rights recognised and protected by the constitutions of member states and reflected in international instruments for human rights on which member states have collaborated or to which they are signatories;

7. Considering that accession of the European Communities to the European Convention on Human Rights would eliminate the risk of diverging interpretations of the convention;

8. Convinced that accession would form an important bond between the European Communities and the member states of the Council of Europe in the specific field of human rights and fundamental freedoms, and would thus contribute to strengthening the principles of parliamentary democracy and the implementation of basic human rights;

9. Having taken note of and welcoming the resolution of the European Parliament of 27 April 1979, and the memorandum of 2 May 1979 by the Commission of the European Communities concerning their accession to the European Convention on Human Rights;

10. Noting that, at the 64th Session of the Committee of Ministers of the Council of Europe in May 1979, the Ministers expressed satisfaction that the Communities were studying the possibility of acceding to the European Convention on Human Rights,

11. Expresses the hope that the European Communities will soon figure among the Contracting Parties to the European Convention on Human Rights;

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12. Stresses the importance, for the consolidation of democracy in all the Community member states, of the latters' obligation to comply with the requirements of Article 3 of the Statute of the Council of Europe, which constitutes, legally, the sole mans of taking sanctions against any state which abandons the democratic forms of government and ceases to respect the fundamental rights;

13. Expresses the wish that the European Communities will make a formal application to adhere to the European Convention on Human Rights in the very near future;

14. Instructs its Legal Affairs Committee to follow any developments in this field and to report on them if it deems it fit to do so."

VIII. MASS MEDIA

During the period under review, the ad hoc Committee of Experts on the Mass Media (CAHMM) was given the status of a Steering Committee (CDMM). By this decision the Committee of Ministers underlined the importance it attaches to the proper functioning of the mass media (press, radio, television) for democracy in the member States.

Secretariat responsibility for the CDMM was transferred from the Directorate of Legal Affairs to the Directorate of Human Rights, it being understood that the latter Directorate will maintain liaison with other Services whose work touches on the mass media.

The central task of the CDMM is to keep under review the developments in the media field in Europe (press, radio, television) having regard to the role played by the media in a free, democratic and pluralist society. The Committee is giving special attention to social, economic, cultural and legal implications of new information technology (cable distribution, direct satellite broadcasting, videotext, sound and video recording).

In the field of human rights, there will be close co-operation between the CDMM and the CDDH, having regard to the fact that freedom of information is not only such an important human right but is also indispensable to the exercise of other human rights.

At its first meeting (February 1981) the CDMM drew up its own terms of reference, which were approved by the Ministers' Deputies in April at their 333rd meeting, and at its second meeting (October 1981) the terms of reference of its new subordinate committees (approved in November 1981 by the Ministers Deputies at their 339th meeting).

The committees of experts of the former CAHMM brought their activities to a close and submitted final activity reports: document CDMM (81) 19 adopted, at a joint meeting in June 1981, by the committees of experts on the functions and the role of the media (MM-FR) and on the electronic media (MM-ME), and document CDMM (81) 14 adopted by the Committee of Experts on legal protection in the media field (MM-PJ) at its final meeting in October 1981.

The CDMM adopted, and the Committee of Ministers approved, the publication of reports on the following subjects:

- Determining factors, mechanisms and means for the elaboration of the content of communication;
- Advertising in radio and television broadcasts;
- Statutory regulation and self-regulation of the press;
- Repercussions of the increase in available television programmes on the situation of the media as a whole;
- The financing of broadcasting services.

These texts will be made available to interested circles in the form of a new series entitled "Mass Media Files".

Further studies are in progress on:

- The economic and financial situation of the daily press;
- Inter-dependence of the media;
- Internal organisation of the media;
- Principles and criteria concerning the content of radio and television programmes.

On the advice of the MM-PJ and the CDMM, the Committee of Ministers decided to extend, by means of a Protocol from 1985 to 1990, the date before which States Parties to the European Agreement on the protection of television broadcasts should become parties to the Rome Convention on the protection of performing artists.

The CDMM held an exchange of views on the question of the "New World Information and Communication Order" which since 1976 is a topic of broad debates in Unesco. The Committee decided to keep under review the response which the member States are giving to the needs of developing countries regarding their communications infrastructure, in the framework of Unesco's new International Programme for the Development of Communications (IPDC) as well as in bilateral and non-governmental frameworks. Moreover, the Committee of Ministers intends to issue at its 70th meeting in April 1982 a declaration on the freedom of the media.

The CDMM has been asked by the Committee of Ministers to give opinions on the contribution which the media can give to the fight against intolerance, violence and terrorism.

In the autumn of 1981 the CDMM set up its new subordinate structures. The Committee of Experts on Media Policy (MM-PO), which held its first meeting in December 1981, is concentrating on European co-operation in the field of direct broadcasting by satellite (DBS), bearing in mind the work carried out on certain aspects of this question in other European bodies (Commission of the EEC, ESA, EBU) and in the Outer Space Committee of the United Nations.

The Committee of legal experts in the media field (MM-JU) has a wider mandate than the previous MM-PJ Committee. While the protection of copyright still constitutes its main task, the Committee may also be called on for advice on other legal questions in the media field. At present, it will give priority to the question of distribution of television programmes by cable, in close co-operation with the intergovernmental committees on copyright and neighbouring rights, meeting in the framework of WIPO (Berne Union), Unesco (Universal Convention) and ILO (Rome Convention on performing artists) as well as with a large number of non-governmental organisations. A working party is preparing a report on this question, for consideration by the MM-JU at its first meeting in October 1982.

The MM-JU will also keep under review the question of citizens' band radio and it will draw up an opinion on the advisability of a European agreement on foreign amateur radio operators.

Furthermore, this Committee follows, with a view to a possible harmonisation, the question of the protection of copyright with regard to the ever more widespread use of sound and video recording.