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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.

COUNCIL OF EUROPE ---

CONSEIL DE L'EUROPE

Strasbourg, 20 December 1982

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ACTIVITIES OF THE COUNCIL OF EUROPE

IN THE FIELD OF HUMAN RIGHTS

IN 1982

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

Section 1 - Signatures, ratifications, declarations, etc

On 8 September 1982, Liechtenstein has ratified the European Convention on Human Rights and Protocol No. 2. All member States of the Council of Europe are now parties to the Convention (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 all States.

Liechtenstein has also made the declaration under Article 25 of the European Convention on Human Rights. The effect of this declaration is to recognise for three years the competence of the European Commission of Human Rights to receive individual petitions. At the end of 1982, therefore, the number of States having recognised such a competence is 17 (2). The same 17 States, as well as Cyprus and Greece, have recognised the compulsory jurisdiction of the European Court of Human Rights (Article 46 of the Convention).

By the end of 1982, 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 13 States - Austria, Belgium, Denmark, France, the Federal Republic of Germany, Iceland, Ireland, Italy, Luxembourg, Netherlands, 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 1982, 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, Liechtenstein, 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, Liechtenstein, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, United Kingdom (including 16 overseas territories).

II. Activities of the European Court of Human Rights

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

A. THE CASE OF CAMPBELL AND COSANS

By judgment delivered at Strasbourg on 25 February 1982 in the case of Campbell and Cosans, which concerns the United Kingdom, the European Court of Human Rights held, by six votes to one, that Mrs Campbell and Mrs Cosans had been victims of a violation of the second sentence of Article 2 of Protocol No. 1 to the European Convention on Human Rights on account of the existence of corporal punishment as a disciplinary measure in the schools attended by their children. The Court also held, by the same majority, that the suspension of Mrs Cosans' son from school following his refusal to accept such punishment amounted to a denial of his right to education, contrary to the first sentence of the said Article 2. On the other hand, the Court found unanimously that no violation of Article 3 of the Convention had been established.

The case originated in applications lodged with the Commission by Mrs Campbell in March 1976 and by Mrs Cosans in October 1976. Each applicant maintained that the use of corporal punishment in the schools in question constituted treatment contrary to Article 3 of the Convention and also failed to respect her right as a parent to ensure her son's education and teaching in conformity with her philosophical convictions, as guaranteed by the second sentence of Article 2 of Protocol No. 1. Mrs Cosans further contended that her son's suspension from school violated his right to education, protected by the first sentence of the last-mentioned Article.

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

- by nine votes to five, that there had been, as regards both applicants, a violation of the second sentence of Article 2 of Protocol No. 1;
- by eight votes to one, with five abstentions, that it was not necessary to consider whether there had been a separate violation of the first sentence of the said Article 2;
- by thirteen votes to one, that there had not been any violation of Article 3 of the Convention.

In its judgment, the Court inter alia recalled that a Contracting State is bound to respect parents' philosophical convictions in the exercise of each and every function which it assumes in relation to education and to teaching. Contrary to the Government's submission, the Court held that in Scotland the functions assumed by the State, which had undertaken responsibility for formulating general education policy, extended to questions of discipline in general, discipline being an integral part of any educational system.

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The expression "philosophical convictions" was not, in the Court's view, capable of exhaustive definition but, in the context of Article 2, it denoted views which attained a certain level of cogency, seriousness, cohesion and importance, were worthy of respect in a democratic society, were not incompatible with human dignity and did not conflict with the fundamental right of the child to education. The applicants' views on corporal punishment satisfied these various criteria and did therefore, contrary to the Government's submission, amount to "philosophical convictions".

The Court rejected the Government's plea that the policy of moving gradually towards the abolition of corporal punishment was in itself sufficient to comply with the duty to "respect" philosophical convictions. The Court also did not regard it as established that any other solution would necessarily be incompatible with the United Kingdom's reservation to Article 2, on which the Government had relied, whereby the obligation to respect philosophical convictions had been accepted only so far as it was compatible with "the provision of efficient instruction and training, and the avoidance of unreasonable public expenditure".

The Court accordingly concluded, by six votes to one, that both applicants had been victims of a violation of the second sentence of Article 2.

B. ADOLF CASE

By judgment delivered on 26 March 1982 in the Adolf case, which concerns Austria the European Court of Human Rights held, by four votes to three, that there had been no violation of the European Convention on Human Rights. The Court considered that the decision taken under Section 42 of the Austrian Penal Code to terminate the criminal proceedings brought against the applicant was neither inconsistent with the principle of the presumption of his innocence (Article 6 § 2) nor in breach of his right to a fair trial (Article 6 § 1) and to obtain a hearing of witnesses on his behalf (Article 6 § 3 (d)).

The case originated in an application against Austria lodged with the European Commission of Human Rights in 1978 by Dr. Gustav Adolf.

By decision taken under Section 42 of the Penal Code, the Innsbruck District Court (Bezirksgericht) had terminated the proceedings brought against the applicant for an alleged infliction of bodily harm. The District Court considered inter alia, that the applicant's fault could be regarded as minimal and his character justified an expectation of good behaviour in the future.

Before the Commission, Dr. Adolf submitted that the contested court decision, since it involved findings on the facts and on his guilt, infringed the principle of the presumption of innocence as stated in Article 6 § 2 of the European Convention on Human Rights and that section 42 of the Criminal Code in itself violated this Article. He also claimed that in the proceedings as a whole he was denied his right to fair trial and his right to have witnesses heard (Article 6 §§ 1 and 3 (d)).

In its report adopted on 8 October 1980, the Commission had concluded that there had been a violation of paragraph 2 of Article 6 (9 votes against 6 with one abstention) but not of paragraph 1 or of paragraph 3 (12 votes to 3 with one abstention).

As regards the judgment of the Court, the following points will be noted in particular:

- On the basis of its previous case law, the Court drew attention to the autonomous nature of the terms "criminal charge" and "charged with a criminal offence" employed in Article 6: "these expressions are to be understood as having an 'autonomous' meaning in the context of the Convention and not on the basis of their meaning in domestic law". "The prominent place held in a democratic society by the right to a fair trial," the judgment adds, "favours a 'substantive', rather than a 'formal' conception of the 'charge' referred to by Article 6; it impels the Court to look behind the appearances and examine the realities of the procedure in question in order to determine whether there has been a "charge" within the meaning of Article 6.
- The Austrian Government contended that Mr Adolf was not actually prejudiced by the District Court's decision and was therefore not a victim of a violation of his Convention rights. The Court replied that "in its use of the word 'victim', Article 25 denotes 'The person directly affected by the act or omission which is in issue' - that is to say, in the present case the applicant; and the existence of a violation is conceivable even in the absence of prejudice, prejudice being relevant only in the context of Article 50".

C. VAN DROOGENBROECK CASE

By judgment delivered on 24 June 1982 in the Van Droogenbroeck case, which concerns the Kingdom of Belgium, the Court unanimously held that there had been a breach of Article 5 § 4 of the European Convention on Human Rights as the applicant had not been able to bring any proceedings satisfying the requirements of that Article.

On the other hand, the Court found no violation of Article 5 § 1 and Article 4, which had also been relied on by the applicant.

The case originates in an application against Belgium, lodged with the European Commission of Human Rights in April 1977 by Mr Valery van Droogenbroeck, a Belgian national. After serving a prison sentence, the applicant was first placed in semi-custodial care and then detained on several occasions in a prison. He alleged that his deprivation of liberty, which in his view had been ordered by the Ministry of Justice and not by a court, contravened paragraph 1 of Article 5 of the European Convention on Human Rights and that he had not been able to seek a judicial review of the lawfulness of his detention, as is required by paragraph 4 of the same Article. He also claimed that he was held in servitude and required to perform forced labour, contrary to Article 4 §§ 1 and 2.

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In its report of 9 July 1980, the Commission had expressed the opinion that there had been a violation of paragraph 4 of Article 5 (unanimously), but not of paragraph 1 (by ten votes to two) or of Article 4 (unanimously).

As regards the judgment of the Court, the following observations concerning Article 5 § 4 of the Convention will be noted: the "lawfulness" of a "detention", within the meaning of Article 5 § 4, has to be determined in the light not only of domestic law, but also of the Convention which prohibits arbitrariness. Detention of a recidivist or a habitual offender would no longer be in conformity with the Convention if it ceased to be based on reasons that were plausible and consistent with the objectives of the Social Protection Act.

It follows that the recidivist must be entitled to apply to a court having jurisdiction to decide on the lawfulness of his deprivation of liberty, both during the course of the detention (once a certain period has elapsed since the detention began and thereafter at reasonable intervals) and also at the moment of any return to detention after being at liberty.

D. ECKLE CASE

By judgment delivered on 15 July 1982 in the Eckle case, which concerns the Federal Republic of Germany, the Court held unanimously that there had been a violation of Article 6 § 1 of the European Convention on Human Rights: it considered that the length of two sets of criminal proceedings instituted against Mr and Mrs Eckle (seventeen years and three months, and ten years, four months and ten days, respectively) had exceeded the "reasonable time" stipulated in Article 6 § 1.

In its report of 11 December 1980, the Commission had expressed the unanimous opinion that there had been a breach of Article 6 § 1.

As regards the judgment of the Court, the passage of the judgment will be noted where the Court refers to its observations concerning the notion of "victim" in the Adolf case (see above) and develops them as follows: "Consequently, mitigation of sentence and discontinuance of prosecution granted on account of the excessive length of proceedings do not in principle deprive the individual concerned of his status as a victim within the meaning of Article 25".

E. SPORRONG AND LÖNNROTH CASE

By judgment delivered on 23 September 1982, the Court held by ten votes to nine that there had been a violation of Article 1 of Protocol No. 1 in a case concerning Sweden: the Sporrong Estate and Mrs Lönnroth had been victims of an interference with their rights of property, which could have been rendered legitimate only if they had had the possibility of seeking reduction of the period of validity of the expropriation permits or of claiming compensation. The Court also held (twelve votes to seven) that there had been a violation of Article 6 § 1 of the European Convention on Human Rights since the applicants' case could not have been heard by a tribunal competent to determine all the aspects of the matter.

On the other hand, the Court found unanimously that there had been no breach of Article 14 of the Convention.

The case originates in two applications against Sweden lodged with the European Commission of Human Rights in August 1975, one by the Estate of the late Mr E Sporrang and the other by Mrs I Lönnroth.

The applicants are owners of properties situated in the centre of Stockholm. In July 1956 (as regards the first applicant) and September 1971 (as regards the second applicant) the Government granted the City of Stockholm zonal expropriation permits in respect of a large number of properties, including those owned by the applicants. The permits, which were accompanied by prohibitions on construction, were eventually cancelled in May 1979.

The Sporrang Estate and Mrs Lönnroth complained of unjustifiable interference with their right to peaceful enjoyment of their possessions, as guaranteed by Article 1 of Protocol No. 1 to the European Convention on Human Rights. They also alleged a violation of Article 6 § 1 of the Convention on the ground that the questions of expropriation and compensation had not been determined within a reasonable time by the Swedish courts, as well as a breach of Article 13 on the ground that they had no effective remedy before a national authority against the infringements of their rights. Lastly, they alleged a violation of Article 14 and relied on Articles 17 and 18.

At the relevant time Swedish law did not provide for the possibility of seeking a reduction of the period of validity of the permits or of claiming compensation for loss occasioned by the length of their validity or by their non-utilisation. The law, which was modified in 1972, still excludes the second of these possibilities.

In its report of 8 October 1980, the Commission had expressed the opinion that there had been a violation of Article 13 of the Convention (ten votes to two, with four abstentions). On the other hand, it concluded that there had been no breach of Article 1 of Protocol No. 1 (ten votes to three), of Article 6 § 1 of the Convention (eleven votes to five) or of Articles 14, 17 and 18 (unanimously) of the Convention.

F. PIERSACK CASE

By judgment delivered on 1 October 1982 in the Piersack case, which concerns Belgium, the European Court of Human Rights held unanimously that Mr Piersack had been the victim of a breach of Article 6 § 1 of the European Convention on Human Rights: the impartiality of the tribunal which had to determine the criminal charge against the applicant was capable of appearing open to doubt.

The case originated in an application lodged by Mr Piersack with the Commission in March 1979. He claimed to be the victim of a breach of Article 6 § 1 of the Convention; he contended that he had not received a hearing by "an independent and impartial tribunal established by law", since the President of the Assize Court which convicted him had allegedly dealt with the case at an earlier stage in the capacity of senior deputy to the procureur du Roi.

In its report of 13 May 1981, the Commission had expressed the unanimous opinion that there had been a breach of one of the requirements of Article 6 § 1, namely that the tribunal be impartial.

As regards the judgment, the Court's analysis of the notion of "impartial tribunal" will be noted in particular.

Whilst impartiality normally denotes absence of prejudice or bias, its existence or otherwise can, notably under Article 6 § 1 of the Convention, be tested in various ways.

The Court saw no cause to doubt the personal impartiality of the judge concerned; indeed personal impartiality is to be presumed until there is proof to the contrary. The Court pointed out, however, that in this area even appearances could be of a certain importance and it considered that any judge in respect of whom there was a legitimate reason to fear a lack of impartiality ought to withdraw.

It would be going too far to the opposite extreme to maintain that former judicial officers in the public prosecutor's department were unable to sit on the bench in every case that had been examined initially by that department, even though they had never had to deal with the case themselves. So radical a solution would erect a virtually impenetrable barrier between the bench and the public prosecutor's department and would lead to an upheaval in the judicial system of several Contracting States. Above all, the mere fact that a judge was once a member of the public prosecutor's department is not a reason for doubting a lack of impartiality on his part.

The Belgian Court of Cassation adopted in the instant case a criterion based on the functions exercised, namely whether the judge had previously intervened "in or on the occasion of the exercise of functions as a judicial officer in the public prosecutor's department."

A criterion of this kind does not fully meet the requirements of Article 6 § 1; account must also be taken of questions of internal organisation. If an individual, after holding in the public prosecutor's department an office whose nature is such that he may have to deal with a given matter, subsequently sits in the same case as a judge, the public are entitled to fear that he does not offer sufficient guarantees of impartiality.

This was what occurred in the present case. In the Court's view, there was little need to gauge the precise extent of the role played by the judge concerned in his former capacity. It was sufficient to find that the impartiality of the "tribunal" which had to determine the merits of the criminal charge was capable of appearing open to doubt.

G. THE CASE OF X v. THE UNITED KINGDOM

By a judgment delivered on 18 October 1982, the European Court of Human Rights delivered judgment on the award of "just satisfaction" in this case (Article 50 of the European Convention on Human Rights). The Court unanimously took formal note of an agreement between the United Kingdom Government and the applicant's estate concerning the costs incurred in the proceedings before the Strasbourg institutions. The Court was also unanimous in holding that the Government should pay

the applicant's estate £324 in respect of certain costs referable to legal services provided to the late applicant in the United Kingdom. The remainder of the claim for just satisfaction was rejected by six votes to one.

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By an earlier judgment of 5 November 1981, the Court had held that there had been a breach of paragraph 4 (the right to take court proceedings to test the lawfulness of one's detention), but not of paragraph 1 (the right to liberty and security of person), of Article 5 in relation to X's compulsory confinement in a psychiatric hospital. The Court had further held that it was not also necessary to examine the case under paragraph 2 of Article 5 (the right to be informed of the reasons for one's arrest).

H. THE CASE OF YOUNG, JAMES AND WEBSTER

By a judgment delivered on 18 October 1982, the European Court of Human Rights delivered judgment on the award of "just satisfaction" in this case (Article 50 of the European Convention on Human Rights). The Court held unanimously that the United Kingdom was to pay:

- a. in respect of pecuniary losses (lost earnings, pension rights and travel privileges, and also interest), £16,626 to Mr Young, £40,215 to Mr James and £7,076 to Mr Webster, together in each case with certain additional interest;
- b. in respect of non-pecuniary loss, £2,000 to Mr Young, £6,000 to Mr James and £3,000 to Mr Webster;
- c. to the three applicants together, in respect of legal costs and expenses, £65,000 less 35,764 FF.

The Court rejected unanimously the remainder of the applicant's claims for just satisfaction.

By judgment of 13 August 1981, the plenary Court had held that the applicant's dismissal from their employment with British Rail for failure to join a specified trade union had entailed a violation of Article 11 of the Convention.

I. THE CASE OF LE COMPTE, VAN LEUVEN AND DE MEYERE

On 18 October 1982, the European Court of Human Rights delivered judgment on the award of "just satisfaction" in the case of Le Compte, Van Leuven and De Meyere (Article 50 of the European Convention on Human Rights).

The Court held unanimously that Belgium was to pay, in respect of costs and expenses before the Court of Cassation and the Convention institutions:

- 77,000 BF to Dr. Le Compte
- 63,000 BF to Dr. Van Leuven
- 42,000 BF to Dr. De Meyere.

The remainder of the claims for just satisfaction were rejected unanimously.

By judgment of 23 June 1981, the plenary Court had held that there had been a breach of Article 6 § 1 of the Convention in that the applicant's case had not been heard publicly by a tribunal competent to determine all the aspects of the matter.

J. IN THE CASE OF FOTI AND OTHERS

By judgment delivered on 10 December 1982 in the case of Foti and others, which concerns Italy, the Court held unanimously that there had been violation of Article 6 § 1 of the European Convention on Human Rights: it considered that the length of six sets of criminal proceedings brought against the applicants had been subject to delays incompatible with Article 6 § 1.

The case of Foti and others originated in four applications lodged by Mr Foti, Mr Lentini, Mr Cenerini and Mr Gullì with the European Commission of Human Rights in 1976-77. The applicants complained of, amongst other things, the length of the criminal proceedings brought against them. They claimed that the length of the proceedings was principally due to the transfer of their cases to another jurisdictional area and constituted a violation of their right to trial within a "reasonable time" within the meaning of Article 6 § 1 of the Convention. On 11 May 1978, the Commission declared the applications admissible in so far as they related to the duration of the criminal proceedings and ordered the joinder of Mr Gullì's application to the other three applications, which had been joined on 9 May 1977.

In its report of 15 October 1980, the Commission expressed the unanimous opinion that there had been violation of Article 6 § 1; it considered it unnecessary to rule on the application of Article 13.

As regards the judgment, the Court recalled that the system of protection established by the Convention does not enable the Commission and the Court either to take up a matter of their own motion or to take into consideration facts not adduced by the applicant. Nonetheless, the Strasbourg institutions do have jurisdiction to attribute to the facts of the case a characterisation in law different from that given by the applicant or to view those facts in a different manner; furthermore, not only the original application but also the additional documents must be taken into account. This was what had happened in the instant case: the applicants having kept the Commission advised of the progress of the proceedings, it was possible for the Commission to consider that the facts adduced potentially involved an issue of trial within a "reasonable time" and to examine the matter *ex officio*. In their memorial on admissibility, the applicants had adopted as their own the Commission's grounds and had thus supplemented their application. The Court accordingly held that it had jurisdiction to settle this issue (six votes to one).

In order to decide whether the length of the proceedings had exceeded the "reasonable time" requirement contained in Article 6 § 1, the Court had regard notably to the complexity of the case, the conduct of the applicants and the conduct of the judicial authorities.

The Court noted that the offences of which the applicants were accused could in themselves scarcely be described as complex; in addition, except in the second Foti case, they had been dealt with at one jurisdictional level alone. Accordingly, such delays as had occurred in the conduct of the proceedings were not imputable to the applicants.

The Court found various unreasonable delays at the stage of the preliminary instruction in the first prosecution brought against Mr Foti. Similar unreasonable delays were found, as far as the second proceedings against Mr Foti were concerned, in relation to the period between the appeal entered by the prosecuting authorities against the decision ordering discharge (November 1971) and the dismissal of that appeal by the investigation chamber (10 January 1976) and, as far as the third proceedings against the same applicant were concerned, in relation to the time that elapsed between his being charged (March 1973) and the public prosecutor's request for transferral of the proceedings (February 1976).

With regard to the proceedings against Mr Lentini, the Court considered that the delay between the committal for trial (September 1972) and the request for transferral of the proceedings (May 1974) was unjustified.

In the case of Mr Cenerini, the Court held that the time taken between the committal for trial (October 1972) and the request for transferral of the proceedings (May 1974) was unduly long. The Court also regarded as abnormal the delay between the issue of the transferral order by the Court of Cassation (January 1975) and the forwarding of the case-file to the Potenza Regional Court (April 1976).

Finally, in Mr Gulli's case, the Court adjudged three delays to be excessive. Those delays occurred, firstly, between the committal for trial (March 1973) and the request for transferral of the proceedings (November 1974); secondly, between the applicant by the public prosecutor attached to the Catanzaro Court of Appeal for the case to be remitted to another jurisdictional area (December 1974) and the forwarding of the case-file to the Court of Cassation (December 1975); and, finally, between the lodging of the grounds for the Court of Cassation's order (March 1976) and the summons to the applicant to appear before the Potenza Regional Court (February 1978).

K. THE CORIGLIANO CASE

By judgment delivered in the Corigliano case, which concerns Italy, the Court held unanimously that there had been a violation of Article 6 § 1 of the European Convention on Human Rights: the Court considered that, at the stage of the preliminary investigation at Messina, the criminal proceedings brought against Mr Corigliano were subject to unjustified delays.

The case originated in an application lodged by Mr Corigliano with the Commission in July 1978. This application referred to two previous applications and sought to establish that it contained relevant new information. Mr Corigliano alleged a two-fold violation of Article 6 § 1 of the Convention: the investigation chamber of the Messina Court of Appeal was not "an independent and impartial tribunal established by law", as one of the members had sat on the Reggio Calabria Regional Court at the same time as one of the judicial officials he had accused; and the "reasonable time" had been exceeded.

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In its report of 16 March 1981, the Commission expressed the unanimous opinion that there had been violation of Article 6 § 1.

As regards the judgment, the Court noted that according to its case-law, the word "victim" in Article 25 denotes the person directly affected by the act or omission in issue, the existence of a violation being conceivable even in the absence of prejudice. It was undeniable that the duration of the relevant proceedings directly affected Mr Corigliano, albeit doubtless not constituting one of his major sources of concern.

In order to assess the reasonableness of the length of the proceedings (six years and two months), the Court had regard to, amongst other things, the complexity of the case, the conduct of the applicant and the conduct of the judicial authorities.

The Court declared inadmissible the claim for just satisfaction in so far as it related to Article 368, which makes it a punishable offence to utter slander. The Court further rejected the claim in so far as it sought monetary compensation for pecuniary and non-pecuniary damage, the existence of the former not having been established and the latter being sufficiently repaired by the finding of a breach of Article 6 § 1. As far as legal costs were concerned, Mr Corigliano had incurred none in Italy and before the Convention institutions he had argued his case in person. On the other hand, he was entitled to reimbursement of the travel and subsistence expenses he had had to bear in attending the hearings before the Commission and the Court; an equitable assessment of these expenses was held to be 2,200,000 Lire.

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 54 of the Convention.

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

a. The "McVEIGH, O'NEILL and EVANS" Case 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 their applications introduced on 29 July 1977, the applicants complained of having been arrested and detained for "examination" under the "Prevention of Terrorism" legislation in force in the United Kingdom, of various measures, such as fingerprinting and photography, taken during their detention and of the retention by the authorities of certain records following their release, two of the applicants, MM McVeigh and Evans, also complaining that they were not allowed to join or contact their wives.

The European Commission of Human Rights, in its report adopted on 18 March 1981, expressed the opinion by 13 votes to 1 that there had been no breach of Article 5, paragraphs 1 and 3, by 13 votes with 1 abstention, that there had been no breach of Article 5, paragraph 2, by 12 votes with 2 abstentions, that there had been no breach of Article 5, paragraph 4, by 13 votes with 1 abstention, that there had been no breach of Article 5, paragraph 5, by unanimity that the measures such as fingerprinting taken during the applicants' detention had not been in breach of Article 8, by 11 votes to 1 with 2 abstentions that the retention of records after release had not been in breach of Article 8, by unanimity that the fact that the applicants McVeigh and Evans had been prevented from joining their wives involved no breach of Article 8 and by 12 votes to 2 that the fact that these applicants had also been prevented from contacting their wives involved a breach of Article 8 of the Convention.

During the examination of this case the representative of the Government of the United Kingdom drew the attention of the Committee of Ministers to the fact that there had been a conflict of evidence as to whether the applicants McVeigh and Evans had requested that telephone messages be passed to their wives to say that they had been detained, and in particular drew attention to the fact that at the relevant time there existed a system for recording such requests but that in the applicants' case there was no record of any such request having been made and that consequently it was the view

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of the Government of the United Kingdom that the absence of any record indicated that no such requests were in fact made by the applicants, whilst the Commission found that the two applicants in question had asked to contact their wives as alleged by them, and that they had not been allowed to do so.

The United Kingdom representative informed the Committee of Ministers that since the time of the applicants' detention new arrangements had been brought into operation following the entry into force, in June 1978, of Section 62 of the Criminal Law Act 1977 and that these arrangements were designed to ensure that there would in future be a full record of all requests for notification of the fact of detention to a person named by persons detained by the police and that, in the small number of cases where the authorities decided it was necessary to delay such notification in the interest of the investigation or prevention of a crime or the apprehension of offenders, there would also be a full record of the reasons for refusal of immediate notification.

The Committee of Ministers, agreeing with the opinion expressed by the Commission in accordance with Article 31, paragraph 1, of the Convention;

- a. Decided that in this case there has been no violation of Article 5, paragraph 1 to 5 of the Convention;
 - b. Decided that in this case there has been no violation of Article 8 of the Convention in respect of the searching, questioning, fingerprinting and photography of the applicants during their detention, nor in relation to the retention, after the applicants' release, of their fingerprints, photographs and information obtained during their examination, nor in respect of the fact that the applicants McVeigh and Evans were prevented from joining their wives;
 - c. Decided that in this case there has been a breach of Article 8 of the Convention insofar as the applicants McVeigh and Evans were prevented from contacting their wives during detention;
 - d. Decided, having regard to the information supplied by the Government of the United Kingdom on the new arrangements which have been introduced and which are set out above, that no further action was called for in this case.
- b. The Case of "JESPERS" against Belgium

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

In this application, introduced on 23 October 1978, the applicant presented a certain number of complaints concerning the proceedings as a result of which he had been convicted, invoking Articles 5, paragraph 1, 6 paragraphs 1, 2, 3(b) and (d), Articles 14 and 13 of the Convention.

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The European Commission of Human Rights, after declaring the application partly admissible on 15 October 1980, expressed in its report the opinions by 9 votes and 3 abstentions that Article 6, paragraph 3(b) of the Convention had not been violated and also that Article 6, paragraph 1, had not been violated.

The Committee of Ministers, agreeing with the opinion expressed by the Commission in accordance with Article 31, paragraph 1, of the Convention in its Resolution DH (82) 3 of 29 September 1982,

Decided that in this case there was no violation of the Convention for the Protection of Human Rights and Fundamental Freedoms.

c. The Case of "HENDRIKS" against the Netherlands

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

In his application, introduced on 24 November 1978, the applicant complained that contrary to Article 8 of the Convention he could not effectively enjoy the right of access to his child, that the court proceedings concerning his request for access violated Article 6, paragraph 1, of the Convention and that the Court's refusal to grant him access to his child was contrary to Article 3 of the Convention.

The European Commission of Human Rights, having declared the application admissible on 13 March 1980, had expressed in its report the opinion by 10 votes against 6 that there had been no violation of Article 8 of the Convention, by 12 votes against 2 with 2 abstentions that there had been no violation of Article 3 of the Convention, that the court proceedings concerned did not, as regards their length, disclose a violation of Article 6, paragraph 1, of the Convention and, by 14 votes with 2 abstentions that the procedure followed by the courts did not otherwise disclose a violation of the same Article.

The Committee of Ministers, in its Resolution DH (82) 4 of 10 December 1982, agreeing with the opinion expressed by the Commission in accordance with Article 31, paragraph 1, of the Convention, decided that in this case there was no violation of the Convention for the Protection of Human Rights and Fundamental Freedoms.

d. The "WINTERWERP" Case

The Committee of Ministers examined this case within the framework of Article 54 of the European Convention on Human Rights.

The case had its origins in an application against the Netherlands lodged with the European Commission of Human Rights under Article 25 of the Convention by a Netherlands national, Mr Frits WINTERWERP, complaining that he was being arbitrarily deprived of his liberty, that he had not been allowed a hearing by a court and that he had not been informed of the decisions by which his confinement was several times prolonged; the case was brought before the Court by the Government of the Netherlands and by the European Commission of Human Rights.

In its judgment of 24 October 1979 the Court unanimously held:

that there had been no breach of Article 5, paragraph 1; that there had been a breach of Article 5, paragraph 4; that it had jurisdiction to rule on the complaint under Article 6, paragraph 1, and that the question of the application of Article 50 was not ready for decision;

In its second judgment of 27 November 1981, the Court, having been informed of the terms of the friendly settlement reached between the Government and the applicant in respect of the latter's claims under Article 50 of the Convention, decided unanimously to strike the case off its list.

The Committee of Ministers in its Resolution DH (82) 2 of 24 June 1982, after having invited the Government of the Netherlands 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 declared, after having taken note of the information supplied by the Government of the Netherlands, that it has exercised its functions under Article 54 of the Convention in this case.

The information concerning the measures taken by the Government of the Netherlands is summarised in the Appendix to Resolution DH (82) 2.

V. OTHER MEASURES CONCERNING THE PROTECTION OF HUMAN RIGHTS

Implementation of the 2nd medium-term plan 1981-1986 in the field of the protection and promotion of human rights and fundamental freedoms

A. Strengthening the protection of Human Rights in Europe

- Following the terms of reference conferred on it by the Committee of Ministers, the Steering Committee for Human Rights (CDDH) elaborated a draft additional Protocol to the European Convention on Human Rights concerning the abolition of the death penalty which it transmitted for adoption to the Committee of Ministers.

- The CDDH has adopted the draft of another new additional Protocol to the European Convention on Human Rights. The preparation of this draft by the CDDH and the Committee of Experts for the Extension of the Rights Embodied in the European Convention on Human Rights was undertaken within the terms of reference concerning the identification of rights in the civil and political fields with a view to their inclusion in the European Convention on Human Rights.

This activity originated from a decision of the Committee of Ministers instructing the Committee of Experts to examine the advisability of bringing some of the rights included in the United Nations Covenant on Civil and Political Rights within the purview of the machinery set up by the European Convention. The Committee of Ministers will consider the draft Protocol in the near future.

The Committee of Experts for the extension of the rights embodied in the European Convention on Human Rights held an exchange of views on the ad hoc terms of reference conferred on it by the Steering Committee for Human Rights concerning economic, social and cultural rights which might be included in an additional Protocol to the European Convention on Human Rights.

- The Committee of Experts for the improvement of the procedure under the European Convention on Human Rights studied the implications of an increase in the number of Contracting States recognising the right of individual petition for the working of the organs of the European Convention on Human Rights.

- The Committee of Experts for the Promotion of Education and Information in the field of human rights has directed its attention to the area of vocational training, both initial and in-service training. A pilot project relating to the police has been developed and involves the preparation of a Handbook for use in the training of police officials.

Other current projects of the Committee concern, inter alia, human rights teaching in law faculties, human rights teaching in sociology and psychology departments; human rights publications and general education and information materials; human rights teaching in the training of prison staff.

- The establishment of a Human Rights Documentation Centre was recently approved by the Committee of Ministers. It will operate under the responsibility of the Director of Human Rights. It will become operational on a progressive basis; it is expected that by early 1983 the Centre will already offer a limited number of services.

The Centre will offer dual services: internal and external, since the Council of Europe is both generating and using a wealth of human rights information.

The main tasks of the Centre are (i) the centralisation of internal restricted documents and information; (ii) the operation of a centralised information services; (iii) the operation of an information and research service; (iv) the operation of library facilities and the preparation and dissemination of publications and (v) the co-ordination of the handling of public human rights information between human rights organisations and institutions.

B. Declaration on the freedom of expression and information

The Committee of Ministers adopted the following Declaration on 29 April 1982.

The member States of the Council of Europe,

1. Considering that the principles of genuine democracy, the rule of law and respect for human rights form the basis of their co-operation, and that the freedom of expression and information is a fundamental element of those principles;
2. Considering that this freedom has been proclaimed in national constitutions and international instruments, and in particular in Article 19 of the Universal Declaration of Human Rights and Article 10 of the European Convention on Human Rights;
3. Recalling that through that Convention they have taken steps for the collective enforcement of the freedom of expression and information by entrusting the supervision of its application to the organs provided for by the Convention;
4. Considering that the freedom of expression and information is necessary for the social, economic, cultural and political development of every human being, and constitutes a condition for the harmonious progress of social and cultural groups, nations and the international community;
5. Convinced that the continued development of information and communication technology should serve to further the right, regardless of frontiers, to express, to seek, to receive and to impart information and ideas, whatever their sources;

6. Convinced that States have the duty to guard against infringements of the freedom of expression and information and should adopt policies designed to foster as much as possible a variety of media and a plurality of information sources, thereby allowing a plurality of ideas and opinions;

7. Noting that, in addition to the statutory measures referred to in paragraph 2 of Article 10 of the European Convention on Human Rights, codes of ethics have been voluntarily established and are applied by professional organisations in the field of the mass media;

8. Aware that a free flow and wide circulation of information of all kinds across frontiers is an important factor for international understanding, for bringing peoples together and for the mutual enrichment of cultures;

I. Reiterate their firm attachment to the principles of freedom of expression and information as a basic element of democratic and pluralist society;

II. Declare that in the field of information and mass media they seek to achieve the following objectives:

a. protection of the right of everyone, regardless of frontiers, to express himself, to seek and receive information and ideas, whatever their source, as well as to impart them under the conditions set out in Article 10 of the European Convention on Human Rights;

b. absence of censorship or any arbitrary controls or constraints on participants in the information process, on media content or on the transmission and dissemination of information;

c. the pursuit of an open information policy in the public sector, including access to information, in order to enhance the individual's understanding of, and his ability to discuss freely political, social, economic and cultural matters;

d. the existence of a wide variety of independent and autonomous media, permitting the reflection of diversity of ideas and opinions;

e. the availability and access on reasonable terms to adequate facilities for the domestic and international transmission and dissemination of information and ideas;

f. the promotion of international co-operation and assistance, through public and private channels, with a view to fostering the free flow of information and improving communication of infrastructures and expertise;

III. Resolve to intensify their co-operation in order:

a. to defend the right of everyone to the exercise of the freedom of expression and information;

b. to promote, through teaching and education, the effective exercise of the freedom of expression and information;

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- c. to promote the free flow of information, thus contributing to international understanding, a better knowledge of convictions and traditions, respect for the diversity of opinions and the mutual enrichment of cultures;
- d. to share their experience and knowledge in the media field;
- e. to ensure that new information and communication techniques and services, where available, are effectively used to broaden the scope of freedom of expression and information.

C. Mass media

- On 10 November, at their 71st Session, the Committee of Ministers received a report on direct satellite broadcasting (DBS) prepared by their Steering Committee on the Mass Media (CDMM). The report examines the plans for the use of this new medium by various member States, the positive aspects of such use as well as the legal, economic and cultural problems to which it might give rise. The Ministers have asked their Deputies to give this report a follow-up and prepare recommendations in this field.

- The newly created Committee of Legal Experts in the Media Field (MM-JU), which met for the first time on 29 November, appointed a working party to deal with the legal aspects of satellite broadcasting with special reference to cable distribution, having regard to the expected emergence of satellite-to-cable services.

- On the question of the legal aspects of cable distribution of television programmes, a draft report has been prepared. The report aims at identifying the rights of the contribution to television programmes and the conditions of exercise to these rights (exclusive right, non-voluntary licences, negotiations).

- A new series of publications entitled "Mass Media Files" was launched: Volume 1 "Advertising in Radio and Television Broadcasts", and Volume 2 "Statutory Regulation and Self-Regulation of the Press". Several other studies are being prepared for publication later this year. They constitute a follow-up to the series of reports published in 1980 under the title "Material for a European Media Concept".

D. Exchange of views

- 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 1982. It discussed in particular the provisions of the draft relating to questions of jurisdiction and the implementation measures.

It should be noted in this context that in its reply to Recommendation 909 of the Parliamentary Assembly on the International Convention against Torture, the Committee of Ministers has welcomed the presentation by Costa Rica to the UN Commission on Human Rights of the text of a draft Optional Protocol prepared by the International Commission of Jurists and containing a system of control based principally on a fact-finding machinery more stringent than that included in the Swedish draft.

In the opinion of the Committee of Ministers it would be desirable to have at least some basic implementing rules included in the text of the Convention itself which could be then rapidly adopted. More ambitious machinery could subsequently be included in an optional Protocol which might be negotiated once the Convention has been adopted.

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

This ad hoc Committee of Experts met in September 1982 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 in view of the preparation of a draft Declaration in this field.

E. Seminars

A Seminar on non-judicial means for the protection and promotion of Human Rights was organised in Siena (Italy) from 28-30 October 1982. In the framework of this Seminar, a meeting took place of Ombudsmen, Parliamentary Commissioners, Mediators or persons with similar functions in member States of the Council of Europe.

The conclusions of the seminar are being examined by the Steering Committee for Human Rights.

E. Publications

1. Decisions and Reports of the European Commission of Human Rights

Volumes 22-23.

2. Series A of the European Court of Human Rights

- No. 45 Dudgeon Case
- No. 46 X Case (against the United Kingdom)
- No. 47 Winterwerp Case (Article 5)
- No. 48 Campbell and Cosans Case
- No. 49 Adolf Case
- No. 50 Van Droogenbroeck Case

3. Series B of the European Court of Human Rights

- No. 23 Ireland against the United Kingdom (Volume III - 1982)
- No. 24 Tyrer Case
- No. 26 Klass and others Case
- No. 27 Luedicke and others Case

4. Yearbook of the European Convention on Human Rights

- Volume 23 (1980) will be available at the end of 1982.
- Volume 24 (1981) will be available early in 1983.

The Yearbook contains general information on the Convention, the Commission and the Court, selected 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.

5. Digest of Case law of the European Convention on Human Rights

The Digest contains extracts of published and unpublished decisions and reports of the European Commission of Human Rights and judgments of the European Court of Human Rights. These extracts are arranged according to each article of the Convention and Protocols. Each article contains several sub-headings.

The Digest is being published by Carl Heymans Verlag, Gereonstr. 18-32, D -5000 Köln.

The English edition will be available at the end of 1982/early 1983.

6. Stocktaking on the European Convention on Human Rights

The 1981 edition is available in English.

7. Mass Media Files

- No. 1 Advertising in radio and television broadcasts
- No. 2 Statutory regulation and self-regulation of the press
- No. 3 Economic and financial aspects of the Mass Media.

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.

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, 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 Committee of Ministers in Resolution ChS (82) 1, adopted on 26 March 1982, observes that Contracting States apply to a very large extent the provisions of the Charter which they have accepted; it also draws the attention of the governments of the States concerned to the observations made in Conclusions V^r of the Committee of Independent Experts, the 6th report of the Governmental Committee and the Assembly's Opinion No. 106 and in particular to the latter's observations regarding re-establishing, achieving or maintaining full employment, certain aspects of the international co-ordination of social security systems, the employment of certain categories of migrant workers, the situation of certain categories of migrant workers in respect of equality of treatment, certain aspects of family reunion of migrant workers and their protection against expulsion.

The Committee of Independent Experts considered the reports submitted for the period from 1 January 1978 to 31 December 1979 (seventh cycle). It adopted, in December 1981, Conclusions VII which have been forwarded to the Governmental Committee and the Assembly simultaneously. The Governmental Committee has adopted its own report but the Parliamentary Assembly has not given its Opinion, as yet.

In September 1982, the work concerning the eighth cycle of supervision was started. The Committee of Independent Experts is in the process of examining biennial reports for the period 1980-81.

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, regulations 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, paragraph 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. The latter has adopted its Opinion. All the relevant documents are at present before the Committee of Ministers for consideration.

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 paragraph 4 (Reduced working hours or additional holidays for workers in dangerous or unhealthy occupations)
- Article 7 paragraph 4 (Safeguarding the development and vocational training of young persons under 16)
- Article 8 paragraph 4 (Regulation of night work and prohibition of dangerous, unhealthy or arduous work for women workers)
- Article 19 paragraph 8 (Security against expulsion).

The Committee of Independent Experts and the Governmental Committee have already examined the relevant reports bearing on the above provisions and have communicated their reports to the Parliamentary Assembly.

It is obvious that such a reporting may lead to the acceptance of additional provisions as provided for under Article 20, paragraph 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. This has been done by the Steering Committee, the proposals of which are now being considered by the Committee of Ministers.

VII. PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE

In the course of 1982, the Assembly of the Council of Europe adopted various texts dealing with human rights. Among the most important, the following are worth mentioning:

Resolution 765 (1982) on the situation in Turkey, by which the Assembly

"Urges the Turkish Government:

- a. to ensure that the draft constitution which is to be submitted to the approval of the Turkish people, as well as the future laws on political parties and on the electoral system are fully in conformity with Turkey's obligations under the Council of Europe Statute and the European Convention on Human Rights;
- b. to see to it that adequate provision is made for free public discussion before the draft constitution is submitted as planned to a referendum by a secret ballot in autumn 1982;
- c. to respect fully all provisions of the European Convention on Human Rights from which no derogation is admitted, with special emphasis on the elimination of the practice of torture and ill-treatment of prisoners, and pursue vigorously its investigation of all reports in this connection;
- d. to give a delegation of the International Red Cross the possibility of undertaking an objective investigation on the conditions in prisons in Turkey, particularly in connection with allegations of torture;
- e. to guarantee the right of every individual to a fair trial before fully independent courts, as well as humane living conditions in prison establishments, and to release all prisoners unduly detained;
- f. to abolish all laws which unduly limit the right to free expression, the activities of political parties and trade unions and to guarantee these rights explicitly;
- g. to recognise the Turkish population's right to information by establishing genuine freedom of the press;
- h. to ensure that all the conditions of democracy are complied with to enable, in the not too distant future, the new democratically elected Turkish parliamentarians to take their places again in a parliamentary delegation to the Council of Europe."

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Recommendation 934 (1982) on genetic engineering, by which the Assembly

"Invites member governments:

- a. to take note of the reassessments which have taken place in recent years within the scientific community concerning levels of risk from research involving recombinant DNA techniques, and to adjust, in the light of these reassessments, their systems of supervision and control;
- b. to provide for the periodical reassessment of levels of risk from research involving recombinant DNA techniques within the regulatory frameworks for assessing the risks from research involving the handling of micro-organisms in general;

Recommends that the Committee of Ministers:

- a. draw up a European agreement on what constitutes a legitimate application to human beings (including future generations) of the techniques of genetic engineering, align domestic regulations accordingly, and work towards similar agreements at world level;
- b. provide for explicit recognition in the European Convention on Human Rights of the right to a genetic inheritance which has not been artificially interfered with, except in accordance with certain principles which are recognised as being fully compatible with respect for human rights (as, for example, in the field of therapeutic applications);
- c. provide for the drawing up of a list of serious diseases which may properly, with the consent of the person concerned, be treated by gene therapy (though certain uses without consent, in line with existing practice for other forms of medical treatment, may be recognised as compatible with respect for human rights in the probability of a very serious disease being transmitted to a person's offspring);
- d. lay down principles governing the preparation, storage, safeguarding and use of genetic information on individuals, with particular reference to protecting the rights to privacy of the persons concerned in accordance with the Council of Europe conventions and resolutions on data protection;
- e. examine whether levels of protection of the health and safety of the general public and of laboratory workers engaged in experiments or industrial applications involving micro-organisms, including micro-organisms subject to recombinant DNA techniques, are adequate and comparable throughout Europe, and whether existing legislation and institutional machinery offer an adequate framework for their periodical verification and revision to this end;
- f. ensure, by periodic reviews in liaison with the European Science Foundation, that national containment measures for recombinant DNA research and required laboratory safety practice continue to converge and to evolve (albeit by different routes) towards harmonisation in Europe, in the light of new research findings and risk evaluations;
- g. examine the draft recommendation of the Council of the European Communities on the registration and notification to appropriate national and regional authorities of experiments involving recombinant DNA, with a view to the concerted implementation of its provisions in the countries of the Council of Europe;

h. examine the patentability of micro-organisms genetically altered by recombinant DNA techniques."

Recommendation 936 (1982) on the situation in Turkey, by which the Assembly

Recommends that the Committee of Ministers:

i. co-operate closely with the Assembly in following the evolution of the internal situation in Turkey;

ii. use all means at its disposal to facilitate the return of Turkey to full democracy, respecting basic human rights, which is the condition of membership of the Council of Europe, and to keep the Assembly informed on the results of its action."

Recommendation 938 (1982) on the situation in Turkey, by which the Assembly

Recommends that the Committee of Ministers:

"i. find out at once from the Turkish Government the exact circumstances of the arrests and the legal proceedings instituted against Mr Apaydin and those charged with him, as well as against Mr Kacar;

ii. try to secure their release, and take such other measures as the situation demands, should there be any doubt about the legality of those proceedings and their conformity with the European Convention on Human Rights."

Recommendation 941 (1982) on the defence of democracy against terrorism in Europe, by which the Assembly

Recommends that the Committee of Ministers:

"a. devote all due attention to the question of the entry into force of the European Convention on the Suppression of Terrorism, and hence carry out a survey, as advocated in paragraph 13 (a) of Recommendation 916, of prospects for ratification of the Convention by all member States;

b. examine the situation regarding ratification by both member and non-member States of the Vienna Conventions on Diplomatic and Consular Relations and the United Nations Convention on Internationally Protected Persons;

c. study, in consultation with the Assembly and in conjunction with such initiatives as it may take, the most appropriate ways of developing joint action by member States, the United States and Canada against terrorism in countries with a system of pluralist, parliamentary democracy;

d. support the proposal made by several member States at the CSCE meeting in Madrid for an undertaking by all signatory countries of the Helsinki Final Act to co-operate positively in the suppression of terrorism;

e. carry out the proposal in paragraph 13 (h) of Recommendation 916 for the setting up of a Study and Documentation Centre on the causes, prevention and suppression of terrorism, with governmental and parliamentary support and a contribution from non-governmental organisations."

Resolution 774 (1982) on Europe and Latin America - the challenge of human rights, by which the Assembly

Invites the governments of the Council of Europe member States:

- "a. to stop all military aid and all visits by military delegations to repressive regimes and to concentrate financial and economic assistance on actions which are strictly to the benefit of the poorest sectors of the population and which do not give any kind of support to the respective governments;
- b. to take steps within the International Labour Organisation to secure the suspension of the so-called trade union participation by repressive regimes in the work of that organisation, pending the release of detained trade union leaders and the restoration of the free exercise of trade union rights;
- c. to promote a solution of the crisis in El Salvador by means of negotiations between the parties concerned, the government and the opposition united in the 'Revolutionary Democratic Front' (FDR), with a view to ending the civil war and establishing a pluralist democracy;
- d. to invite the United States Government, when drawing up the guidelines of its policy in Latin America, to take account of the need for a reassessment of the political situation which transcends the traditional East-West criteria, with a view to promoting the development of the democratic forces existing in the area;
- e. to encourage the governments of the Central American States and of the United States to begin a scaling down of military forces in the area and to draw up, to that end, non-aggression pacts;
- f. to support the national committees for the protection of human rights and other humanitarian organisations working in Latin America and to provide humanitarian aid for the victims of the conflicts;
- g. to give special attention to the conditions in which refugees live and pursue their occupational and political activities, and to harmonise their policies and their legislation in the matter;
- h. to denounce and condemn all foreign intervention in the internal conflicts of Latin American countries, and to instruct their representatives at the United Nations to take action to secure such non-intervention;
- i. to work out a common policy for co-operation with the democratic States of Latin America, based on the principles stated in this resolution and with special attention to economic assistance to the countries which need this to combat the economic causes of tension and injustice. Special assistance should be given to the few democratic countries of Latin America to overcome their present serious economic imbalance.
- j. to adopt in the international institutions concerned, and particularly in the United Nations Organisation and OECD, an attitude conforming to the principles embodied in the present resolution."

Recommendation 945 (1982) on international humanitarian law, by which the Assembly

Recommends that the Committee of Ministers invite the governments of member States:

- "a. to expedite their ratification of the two Protocols to the 1949 Geneva Conventions, one on protection of victims of international armed conflicts, and the other on protection of victims of non-international armed conflicts, which entered into force on 7 December 1978, or accede thereto;
- b. to ensure that international humanitarian law becomes known by disseminating and teaching of the Geneva Conventions of 12 August 1949 and their Protocols among the armed forces and civilian population."

Recommendation 952 (1982) on international means to protect freedom of expression by regulating commercial advertising, by which the Assembly

"Recommends that the Committee of Ministers, in the light of Article 10 of the European Convention on Human Rights, instruct the Steering Committee on the Mass Media to examine international means to protect freedom of expression by regulating commercial advertising, especially on radio and television, and to make concrete proposals, possibly through the conclusion of a European Convention.

Recommendation 951 (1982) on voting rights of nationals of Council of Europe member States, by which the Assembly

Recommends that the Committee of Ministers:

- "a. support the Assembly's appeal to member States' governments regarding the free exercise of the voting rights of other member States' nationals;
- b. study the most appropriate instrument for establishing a European legal guarantee of the free exercise of the voting rights of member States' nationals living in another member State;
- c. consider the possibility of harmonising member States' laws in the interests of maintaining the voting rights of their nationals living in another member State with regard to nationwide elections and referenda, especially with a view to enabling votes to be cast by post or through diplomatic or consular missions;
- d. envisage, if appropriate, the drawing up of a Protocol to the European Convention on Human Rights whereby member States would undertake to respect such voting rights for their nationals living in another member State and refrain from hindering the exercise thereof by any measure whatever."

Resolution 786 (1982) on the situation in Turkey, by which the Assembly

"Expresses the earnest hope that the Turkish authorities will:

- a. respect the provisions of the European Convention on Human Rights and do everything to eradicate the practice of torture and to pursue its inquiries into all allegations on this subject;
- b. ensure that the draft constitution to be submitted to referendum is in full conformity with the Statute of the Council of Europe, and particularly that it ensures pluralism of political parties and trade unions, the protection and equality of treatment for the country's religious minorities, the rule of law and the separation of powers, and that it incorporates the safeguard of human rights and fundamental freedoms, as guaranteed by the European Convention on Human Rights;
- c. take the appropriate measures to ensure that the referendum takes place in accordance with the rules of democracy, and that it is preceded by a campaign in which all individuals or groups of individuals are free to express themselves freely on the draft constitution and to seek to influence the choice of their fellow citizens;
- d. take the necessary steps, in conformity with Assembly Recommendation 951 on voting rights for nationals of Council of Europe member States, in order to enable the large Turkish community of nearly two million people living and working abroad to participate in the vote for the referendum."

Resolution 787 (1982) on freedom of thought, conscience and religion in Eastern Europe and the CSCE Madrid Review Conference, by which the Assembly

"Calls on the governments of Council of Europe member States participating at Madrid to submit proposals for:

- i. the convening of a human rights conference, and a détente and disarmament conference within the Helsinki process;
- ii. the establishment of a special commission, representative of participating States of the review conference, empowered to investigate fully and to report on any evidence submitted to it by the government or by any individual citizen, or group of citizens of any participating State, of discrimination and persecution for religious belief, and to publish its findings; such reports to be submitted to the United Nations Commission of Human Rights;
- iii. the release and rehabilitation of all prisoners who have been imprisoned for appealing to the provisions of the Final Act since 1975;
- iv. an amnesty for all prisoners condemned on grounds of belief and conscience;
- v. the lifting of all restrictions on the practical expression of freedom of thought, conscience, religion and belief;

Urges these governments to seek a host country for the next Helsinki Review Conference that behaves in accordance with the provisions of the Final Act, especially Principle 7, Basket I: freedom of thought, conscience and religion."

Recommendation 955 (1982) on the protection of human rights in the European non-member countries, by which the Assembly

"Recommends that the Committee of Ministers give consideration to the establishment of a system of common procedure to be adopted by the governments of all member States to draw complaints concerning violations of human rights in all European non-member countries to the attention of the offending governments."