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ANNUAL REPORT ON FREEDOM OF INFORMATION 1961-1962

Note by the Secretary-General

Since the issuance of the second annual report on freedom of information (E/CN.4/838), the following further information has been made available to the Secretary-General:

Israel^{1/}

Questions affecting freedom of the press were touched upon in a recent decision of the Supreme Court sitting as a High Court of Justice. The case concerned the formation of a limited company having as its main object the issuing of a newspaper. Under section 14 of the Companies Ordinance, enacted in 1929 by the then British Mandatory Government of Palestine, the High Commissioner reserved to himself "absolute discretion either to authorize or refuse the incorporation of the company". In the English Companies Act, 1929, from which the Ordinance was taken, this provision had no counterpart, although, as the Court in the above-mentioned judgement pointed out, similar powers had existed in England so long as the founding of companies depended on the grant of a royal charter. In Palestine the retention of such discretionary powers in the hands of the head of the Government (not in itself connected with matters of press law) is explained in the above-mentioned judgement by the animosity which existed between different sections of the population (which had, a few weeks before the enactment of the Ordinance, culminated in rebellion and grave acts of violence).

^{1/} Information provided by the Government of Israel on 10 January 1963.

Section 14 of the Companies Ordinance is still in force; the place of the High Commissioner of Palestine under the Ordinance is taken by the Minister of Justice, and he has delegated the power under Section 14 to the Registrar of Companies. In the present case the Registrar had refused the incorporation of the company "for reasons of security of the State and of the public weal". This view he based on the fact that the chief promoters of the company had been previously convicted of publishing a newspaper without the licence required under the Press Ordinance (of 1933); in that case it had not been a mere formal disregard of the law, but the publication, as the Court then found, had contained incitements against the State of Israel and its population.

In the present case the question before the Supreme Court was whether the Registrar of Companies, in exercising the absolute discretion given by law to the Minister of Justice, was restricted to considerations of company law or whether he was empowered to take into account matters of security of the State and of the public weal as well.

As to the facts of the dispute, the Court found that the Registrar had acted in good faith; there was therefore no question of interfering with his decision by reason of any misuse of his discretion, the legal problem which arose touching only the extent of the power. The majority of the Court adopted a restricted interpretation of the law. They emphasized the difference in the position of the former High Commissioner of Palestine, who was, by special provision of law, exempted from the jurisdiction of the local courts, and of the Government of Israel, its Ministers and departments, who are subject to it. Even though the legislator had not altered Section 14 of the Companies Ordinance, the majority of the Court felt free to construe it in a new sense, so as to prevent the law from becoming petrified. They concluded that the Registrar might only consider the legality of the aims of the company, but not questions of State security or of public welfare at large; he might go behind the declared objects of the company and inquire whether these were a mere disguise for illegal purposes, but since, in the present case, even the previous conviction of the promoters was not sufficient indication of such an intent, the incorporation of the company should be permitted.

It ought perhaps to be emphasized that the question of freedom of information was no more than the occasion in regard to which the dispute in the present case

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arose. The Court did not and could not pronounce on that question, but only on the legal issue before it, that is to say, on the extent of the powers of the Registrar of Companies.

Netherlands^{2/}

On 22 February 1961 the State Secretary for Education, Arts and Sciences and the State Secretary for Economic Affairs submitted to the Second Chamber of the States General a Note on the subject of commercial television.

The State Secretaries stated in their Note that since advertising played an important and positive role in the economic life of a country, it was desirable in principle to permit advertising on television. The State Secretaries maintained that television and advertising were not fundamentally incompatible.

Television was one of the media which widened the scope of freedom of opinion and expression. However, as only a limited number of wave lengths were available, complete freedom in the use of that medium was not possible.

But restrictions in this field should not go further than was strictly necessary. The Government would have to choose carefully from among the would-be television advertisers. Since advertising could be regarded as an aspect of freedom of opinion and expression, and the public interest not being affected, the State Secretaries, taking into account the importance of commercial television to the national economy, declared themselves ready to promote the introduction of commercial television.

In order to maintain the programmes at an acceptable level and to prevent undesirable excesses in the advertisements, which are to be shown only during the natural intervals in second channel programmes, the licensee would have to fulfil certain strict conditions. The latter, however, should never be prejudicial to the freedom of opinion and expression.

The first channel would remain at the disposal of the "Nederlandse Televisie Stichting" (N.T.S.) and the existing broadcasting companies.

Although the Government would not reject out of hand an application by the N.T.S. for broadcasting time on the second channel, no definite decision has

^{2/} Information provided by the Government of the Netherlands on 25 January 1963.

been made on which agency should have the licence; the State Secretaries were anxious to prevent any sort of monopoly from developing.

On 9 November 1961 the Second Chamber sent a provisional reply to the Government's Note. It was evident from the reply that the Government's proposal to introduce commercial advertising on television had divided most political parties into groups supporting or opposing the move.

In the meantime the Government on its part sent in a reply to the Second Chamber. This latest development will be dealt with in the report covering 1962-1963.

Surinam

On 19 October 1961 the judge of the Second Canton of Paramaribo passed judgement in respect of a charge brought by the Public Prosecutor against the editor-publisher of the Independent Surinam Weekly "Onze Tijd", who, it was alleged, had used the columns of his newspaper for wilfully making insulting references to the manner in which the Surinam authorities were spending public money. The accused pleaded that he had not acted with malicious intent, but had merely raised questions of public interest.

The judge held that he could find no terms or phrases in the newspaper in question that could be regarded as insulting, and that the plea of public interest was admissible. The accused was therefore acquitted.

Also on 19 October 1961, the judge of the Second Canton of Paramaribo passed judgement in respect of a charge brought against the editor-publisher of the Surinam daily newspaper "De West". The accused had been charged with wilfully insulting the Government of Surinam in the columns of his newspaper. In one of the articles the accused had asked, inter alia, whether the People's Credit Bank, which operates with taxpayers' funds, had excused a cabinet minister from paying off a debt. The accused was acquitted on the same grounds as were cited in the previous case.
